THE

Complete Copy-holder;

BEING

A Learned Diſcourſe of the Antiquity and Nature of

MANORS and COPY-HOLDS,

with all things thereto incident.

By Sir *EDWARD COKE*, Knight.

Whereto is added

A SUPPLEMENT

By way of Additions to and Amplifications of the foregoing Treatiſe.

Both of them neceſſary as well for Lord *as* Tenant.

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C R
DIEV ET MON DROIT
BODLEIANA BIBLIOTHECA

TO THE READER.

THis Copy coming to my hands, perused and reverenced by men learned in the Laws, I thought most worthy of Publication. The very name of the *Composer*, who hath been an Ornament to our Kingdome, is enough to give it sufficient Authority, and indear it to every wise opinion. But the Profit which doth attend is

most considerable; it being a Subject so material, declaring the Antiquity of *Manors* and *Copyholds*, and written for the good of *Lords* and *Tenants*, and by consequence of all men, it cannot but receive a becoming entertainment. In the confidence of this truth, I refer it to all judicious perusal, not a little congratulating my own happiness, to have been an Instrument of bringing so excellent a Piece from obscurity, for the Benefit of the Commonwealth.

W. C.

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MANORS AND COPY-HOLDS.

SECTION I.

Hough a Manor and Copy-hold have such mutual respect and reciprocal reference one to the other, as that they are almost in nature of Relatives; yet the knowledge of the one cannot be attained unto unless the sense of the other be truly apprehended: for a Manor is as the Body, and Copy-holds certain Members of this Body. In this Treatise I will discourse of them severally apart, and

 begin

begin with the *Manor* it self, especially when common Reason teacheth us, that *Totum magis illustrat Partes, quàm Partes aliquæ illustrant Totum.*

SECT. II.

THE *Saxons* (who held *England* in subjection immediately before the coming of the *Normans*) were unacquainted with these Manors, yet in effect they had Manors in those days in circumstance peradventure something varying, in substance surely nothing differing from our Manors at this day; they wanted neither Demesnes nor Services, the two material Causes of a Manor, as *Fulbeck* termeth them. Their Demesnes they termed Inlands, because the Lords kept them in their own hands, and enjoyed them in their own possession; their Services they termed Utlands, because those Lands were in the manurance and occupation of certain Tenants, who, in consideration of the Profits arising out of these Lands, were bound to perform unto their Lords certain Duties and Services. Their Demesnes were of two sorts, and their Services likewise were of two sorts.

Fulbeck in his fourth Decalogue.

SECT. III.

ONE sort of their Demesnes was termed Bookland, because they passed by Book; and they in effect differed nothing from our Free-hold-Lands at this day.

SECT. IV.

THE other sort of their Demesnes was termed Folkland, because they passed by Polls, and were claimed and challeng'd by the Tenants; not by any Assurance in Writings, but onely by the mouth of the people, *per vocem populi*, and they in effect differed in nothing from Copy-hold-Lands at this day.

SECT. V.

TOuching their Services, one sort of their Services were *Servitia libera*, which consisted most commonly in *Render*, as to pay yearly such a Rent; or in *Ufer*, as where the Lord reserved Common for his Cattel; or in *Prender*, as where the Lord reserved three shillings, and four loads of Estovers for fewel, to be taken yearly in his Tenant's Grounds.

SECT. VI.

THE other ſort of Services were *Servitia villana*, which conſiſted altogether in Feaſance; as to ſcour the Lord's Ditches, to tile his Houſes, to thatch his Barns; or ſuch like.

SECT. VII.

AND in the Reſervation of theſe Services the Lords had a ſpecial reſpect unto the quality of the Land: did they transfer their Bock-lands, that is, Free-hold-Lands, they would never reſerve villain Services; did they transfer their Folk-lands, that is, Copy-hold-Lands, they would never reſerve free Services; but ſtill they ſuited their Services according to the nature of the Land. The reaſon I gather was this: In thoſe days none but men of good account and reckoning enjoyed the ſaid Bock-lands, whereas Folk-lands were in the hands of men of meaner ſort and condition; and therefore had not the Lords care been extraordinary in reſerving apt Service, they ſhould have much wronged their Tenants. And thus much *Lambert* verifieth, ſaying, *Terra ex ſcripto fuit hæreditaria, libera, atque*

Lamb. in his Explication of the *Saxon* word *Terra ex ſcripto.*

que immunis; Terra verò ſine ſcripto Officiorum quadam ſervitute fuit obligata: priorem plerumque nobiles atq; ingenui, poſteriorem verò ruſtici ferè & pagani poſſidebant. *Lambert* termeth theſe Bock-lands *Terras liberas atque immunes; non quòd ab omnibus Servitiis fuerunt liberæ aut immunes, ſed quòd Tenentes ipſi fuerunt liberi, & Servitiis tantùm liberis onerati.* But I much wonder why this Bock-land doth to this day retain the name of Free-hold-Land, ſithence time hath bred ſuch an alteration, that in the point of Service a man can ſcarce diſcern any difference between Free-hold-Lands and Copy-hold-Lands. The favourable hand of Time hath ſo infranchiſed theſe Copy-holders, that whereas in the *Saxons* time their Services did conſiſt wholly in Feaſance, now they conſiſt in Render, in Uſer, and in Prender: as Free-holders Services did in thoſe days. And on the other ſide, Time hath dealt ſo unfavourably with Free-holders, and hath ſo abridged them of their former Freedome, that if you compare the Service of the Free-holders with the Service of the Copy-holders, *ſenties hunc potiùs quàm illum fore liberum.* How many Free-holders are there at this day charged with baſe Services? as many (I doubt not) as there are Copy-holders. No marvel then that many able men

turn Copy-holders, and many Peasants turn Free-holders: no marvell, I say, that men of all sorts and conditions, promiscuously, turn both Free-holders and Copy-holders, sithence there is such small respect had unto the quality of the Land in the reservation of our Services. Yet observe, I pray, though Time hath so infranchised these Copy-holders, that they have in a manner shaken off all villain Service; yet they retain a badge of their former bondage, for they remain still subject to their Lord's will; therefore at this day they are termed Tenants at will. But with Free-holders otherwise it is, for they are not in that subjection to their Lords. Peradventure in this respect onely Bock-lands may be termed Free-hold-Lands, and Folk-land villain-Lands: and yet time hath dealt very favourably with Copy-holders in this point of Will, as well as in the point of Service.

SECT. VIII.

Brac. *lib.* 4. *tr.* 3. *cap.* 8. *num.* 5. Fleta *lib.* 5. *cap.* 51.

FOR, as I conjecture, in the *Saxons* time, sure I am in the *Normans* time, those Copy-holders were so far subject to the Lords will, that *earum Tenentes tempestivè & intempestivè pro voluntate Domini possent resumi & re-*

& revocari, as *Bracton* and *Fleta* both ſpeak: The Lords upon the leaſt occaſion (ſometimes without any colour of reaſon, onely upon diſcontentment and malice; ſometimes again upon ſome ſudden fantaſtick humour, onely to make evident to the world the height of their power and authority) would expell out of houſe and home their poor Copy-holders, leaving them helpleſs and remedileſs by any courſe of Law, and driving them to ſue by way of Petition.

SECT. IX.

BUT now Copy-holders ſtand upon a ſure ground, now they weigh not their Lords diſpleaſure, they ſhake not at every ſudden blaſt of wind, they eat, drink and ſleep ſecurely; onely having a ſpecial care of the main chance, (*viz.*) to perform carefully what Duties and Services ſoever their Tenure doth exact, and Cuſtome doth require: then let Lord frown, the Copy-holder cares not, knowing himſelf ſafe, and not within any danger. For if the Lord's anger grow to Expulſion, the Law hath provided ſeveral weapons of remedy; for it is at his election either to ſue a *Sub-pœna* or an Action of Treſpaſs againſt the Lord. Time hath dealt very favourably with Copy-holders in divers reſpects.

SECT. X.

BUT I perceive my ſelf raſhly running into an inextricable Labyrinth; I will therefore ſail no longer in theſe unknown coaſts, but will haſten homewards; I will content my ſelf with this. I know amongſt the *Saxons* the eſſential parts of a Manor were known; but whether there then were the ſame form of Manors which is at this day, that I dare not examine, for fear of being accounted more curious then judicious; and therefore leaving the *Saxons*, I draw ſomewhat nearer home, and come to the *Normans*, from whom we had the very form of Manors which is obſerved amongſt us at this preſent hour.

SECT. XI.

I Confeſs, indeed, that ſithence the original Creation of Manors, Time hath brought in ſome Innovations and Alterations, as in giving a large Freedome unto Copy-holders both in the nature of their Service, and in the manner of their Tenure. Yet I may boldly ſay, that the ſelf-ſame form of Manors remains unaltered in ſubſtance, though ſomething altered in circumſtance, Demeſne, termed

in

in Latine *Demanium*, *Domanium*, or *Dominicum*, is taken in a double ſenſe, *proprie*, and *improprie*. *Proprie*, for that Land which is in the King's own hands: and the *Chopinus* ſaith, that *Domanium eſt illud quod conſecratum, unitum, & incorporatum eſt Regiæ Coronæ.* Take *Domanium* in this ſenſe, and then you exclude all common perſons from being ſeiſed *in Dominico*: for admit the King paſs over the Demeſne Lands, as ſoon as they come into a common perſon's hands, *deſinunt eſſe terræ Dominicales*: for though the King's Patentee hath the Land granted to him and to his Heirs, yet coming from the King, it muſt neceſſarily be holden of the King, but it is contrary to the nature of Demeſne Lands to be holden of any. Therefore though thoſe Lands which commonly are termed *ancient Demeſne*, *viz.* ſuch Lands as were *quondam* in the hands of *Edward* the *Confeſſor*, may properly be termed generally ancient Demeſne, becauſe they were in ancient time in the King's own poſſeſſion; yet to term them at this day the Lord's Demeſnes, or the Tenant's Demeſnes, being ſevered from the Crown, is improper. *Ca. quo ſupr.*

Chopinus de Domanio, fronte lib. 2.

SECT.

SECT. XII.

THen by this it appeareth that thoſe Lands are termed *impropriè* Demeſne which are in the hands of an inferiour Lord or Tenant, nor can ſuch a one in propriety of ſpeech be ſaid to ſtand ſeiſed of any Land whatſoever *in Dominico ſuo*: but if you obſerve narrowly the manner of Pleadings, the words are uſed in a proper ſenſe, for you ſhall never finde that an inferiour Lord or Tenant will plead that he is ſimply ſeiſed *in Dominico*, but ſtill with this addition, *in Dominico ſuo ut de feodo*; and that very aptly, for this word *Fee* implieth thus much, that his Eſtate is not abſolute, but depending upon ſome ſuperiour Lord. Therefore I conclude, with the *Feudiſts*, that a common perſon may aptly be ſaid to ſtand ſeiſed *in Feodo*, or *in Dominico ſuo ut de feodo*; but improperly *in Dominico* ſimply. The King, *è converſo*, may properly be ſaid to ſtand ſeized *in Dominico* ſimply; but *in Feodo* improperly, or *in Dominico ſuo ut de feodo*. *Bracton* divideth theſe Demeſne Lands into two branches. Under the firſt are comprehended thoſe Lands which the Lord injoyeth in his own poſſeſſion; under the ſecond, thoſe Lands which are in the hands of the inferiour Copy-

hold-

holders. His words are theſe: *Dominicum dicitur quod quis habet ad menſam ſuam, & idcirco Angliè vocatur* Bordland: *dicitur etiam Dominicum Villenagium, quod traditur Villanis, quod quis tempeſtivè & intempeſtivè reſumere poſſit pro voluntate ſua & revocare.* Bract. lib. 4. tract. 3. cap. 9. num. 5.

SECT. XIII.

FLeta agreeth with *Bracton* in this diviſion, and unto theſe two he adds more ſorts of Demeſne Lands. His words are theſe: *Dominicum eſt multiplex. Eſt autem Dominicum propriè terra ad menſam aſſignata; & Villenagium quod traditur Villanis ad excolendum, quod tempeſtivè & intempeſtivè pro voluntate Domini poterit revocari, ſicut eſt de terra commiſſa tenend. quamdiu commiſſori placuerit. Poterit & dici Dominicum de quo quis habet liberum tenementum, alius uſumfruct. & etiam ubi quis habet liberum tenementum, alter curam de Cuſtode, dici poterit & Curatore; quorum unus dicitur ab homine, alius in jure. Dominicum etiam dicitur ad differentiam ejus quod tenetur in ſervitio. Dominicum denique eſt omne illud tenementum de quo anteceſſor obiit ſeiſitus, nec refert cum uſufructu vel ſine, & de quo ſi ejectus eſſet recuperare poſſit* Fleta lib. 5. cap. 5.

per

per Aſſiſam novæ diſſeiſinæ, licèt alius haberet uſumfructum; ſicut dici poterit de illis qui tenent in Villenagio, qui utuntur & fruuntur, non nomine proprio, ſed nomine Domini ſui.

SECT. XIV.

THis opinion of *Bracton* and *Fleta*, both conſenting in one, that Copy-hold-Land is parcell of the Lord's Demeſnes, wanteth not modern authority to ſecond it: for 15 *Eliz.* in the *Exchequer*, I find it adjudged in the Caſe of a common perſon, howſoever it is otherwiſe in the King's Caſe, That if the Lord of a Manor granteth away *omnes terras ſuas dominicales*, the Copy-holds, parcell of the Manor, paſs by theſe general words. Neither doth this want Reaſon to confirm it: for in the time of *Henry* the 3. and *Edw.* the 2. when *Bract.* and *Fleta* lived, Copy-holders were accounted meer Tenants at will, and therefore after a ſort their Lands were reputed to continue ſtill in the Lord's hands: and now, though Cuſtome hath afforded them a ſurer foundation to build upon, yet the Frank-tenement at the Common Law reſting in the Lord, it can be no ſtrange thing to place the Lands under the rank of the Lord's Demeſnes. But to deliver my minde more freely in this point, I think that howſoever,

ver, according to the ſtrict rules of Law, theſe Copy-holds are parcell of Lands Demeſnes, yet in propriety of ſpeech (if propriety can be in impropriety) they are the more aptly called the Copy-holders Demeſnes: for though the Frank-tenement be in the Lord by the Common Law, yet by the Cuſtome the Inheritance abideth in the Copy-holders; and it is not denied, if a Copy-holder be impleaded in making Title to his Copy-hold, he may juſtly plead, *quòd eſt ſeiſitus in Dominico ſuo*, with this addition, *ſecundùm conſuetud. Manerii.* Therefore I conclude, that howſoever the Common Law valueth the Title of the Copy-holder, yet he hath ſuch an Intereſt confirmed unto him by Cuſtome, that the Lord having no power to reſume his Lands, at your own pleaſure they are (though improperly) called (yet peradventure truly accounted) the Lord's Demeſnes, and that in the eye of the world; howſoever it be in the eye of the Law, that theſe Lands alone can properly challenge the name of the Lord's Demeſnes (if any Lands in the poſſeſſion of inferiour Lords may properly challenge that name) which the Lord reſerveth in his own hands, for the maintenance of his own Boord or Table; be it his Waſte ground, his Arable ground, his Paſture ground, or his Meadow; be it his Copy-hold which he hath by

by Eſcheat, by Forfeiture, or by Purchace; or be it any part of his Free-hold-Land, of which I muſt ſpeak a word by the way, not to prove that it is Demeſne, for *manifeſta probatione non indigent*, but to ſhew you in what ſenſe it is taken, and how far it extendeth.

SECT. XV.

A Free-hold is taken in a double ſenſe; either 'tis named a Free-hold in reſpect of the ſtate of the Land, or in reſpect of the ſtate of the Law.

SECT. XVI.

IN reſpect of the ſtate of the Land; ſo Copy-holders may be Free-holders: for any that hath any Eſtate for his life, or any greater Eſtate, in any Land whatſoever, may, in this ſenſe, be termed a Free-holder.

SECT. XVII.

IN reſpect of the ſtate of the Law; and ſo it is oppoſed to Copy-holders, that what Land ſoever is not Copy-hold is Free-hold: and in this ſenſe I take it throughout this Diſcourſe.

SECT.

SECT. XVIII.

THE name of Free-holders extendeth not onely unto Lands held *per ſervitium militare*, as it did by the ancient Laws of *Scots*, amongſt whom Free-holders were known by the name of *Milites*; but it reacheth likewiſe to Lands holden *per ſervitium Socæ*, whether in *libero Socagio*, or in *villano Socagio*. *Liberum Socagium* is, where any Tenant holds of any Lord by paying yearly a certain ſumme of money in lieu of Tillage, and ſuch like Services, and not by Eſcuage: and this is termed ſometimes *common Soccage*. Skene *de verb. ſign. tit. Mila.*

Socagium villanum is, where the ancient Services of carrying the Lord's Dung into the fields, of plowing his Ground at certain days, of plaſhing his Hedges, and ſuch, are not turned into money, but remain ſtill unaltered. And if you doubt that ſuch Land as is held *per villanum Socagium* cannot come within the compaſs of Free-hold-Land; for your ſatisfaction, reade *Bracton, lib. 2. cap. 8. num. 8. Hactenus de primo defunctionis membro: ad ſecundum properemus, & pauca de ſervitiis Domino debitis pertractemus.* Stat. 37 H. 8. cap. 20. it is ſo called.

Services *in individuo* are manifold, *in ſpecie* threefold: 1. Corporal Services, 2. Annual Services,

Services, 3. Accidental Services.

Corporal Services are of two sorts: Services of Submission, Services of Profit.

SECT. XIX.

SErvices of *Submission* are Homage and Fealty, which are certain Ceremonies used among Tenants, whereby they submit themselves unto their Lords, and bind themselves by solemn Oath, or by faithfull Promise, from that day forward to become the Lord's men for life, for member, for terrene honour, or, *ad minimum*, to owe unto him Faith, for the Lands which they hold of him. Both these Ceremonies are used at the first entrance or admittance of any Tenant, and both tend to one end, *viz.* to inforce every Tenant to acknowledge and confess himself Tenant unto his immediate Lord; yet they differ in many material Points.

SECT. XX.

1. IN regard of their severall manner of Performance: for in doing Fealty, the Tenant taketh a solemn Oath; in doing Homage, onely giveth his faithfull Promise. And thence it is that Fealty is accounted the more sacred Service, though Homage be the more humble

humble Service, and performed with far greater reverence then Fealty in many respects: For in doing Homage the Tenant kneeleth, in doing Fealty he standeth; in doing Homage the Tenant must remain uncovered, in doing Fealty he may remain covered; in doing Homage the Lord kisseth his Tenant, in doing Fealty he kisseth him not; lastly, in doing Homage the Tenant promiseth to become the Lord's man for life, for member, and terrene honour, in doing Fealty he onely sweareth to become the Lord's faithfull Tenant. The reason of this difference I learn to be this: Because Homage especially concerneth Service in War, and properly appertaineth unto Knight's Service; but Fealty chiefly concerneth Service at home, and properly appertaineth to Socage-tenure. And though now 'tis held, that a Tenant by Socage may doe Homage, and that Homage *ex se* maketh Socage-tenure, and not Knight's Service; yet originally Homage was invented for Tenants by Knight's Service, and such as were bound by their Tenure to attend their Lords in the Wars; but Fealty was primarily devised for Tenants in Socage, and such as were bound by their Tenure to manure the Lord's ground, and carefully to discharge all rural affairs. And

Skene de verb. sign. tit. Homage.

this agreeth with the ancient Laws in *Scotland*; for amongſt them none were accounted Free-holders, but onely Tenants by Knight's Service, and conſequently none but they could doe Homage. And therefore marvell not why in doing Homage the Tenant promiſeth to become the Lord's man for life, for member, for terrene honour; in doing Fealty he onely ſweareth to become the Lord's faithfull Tenant.

2. They differ in regard of the Perſons to whom they are performed, and that two ways. 1. In reſpect none is capable of receiving Homage, but the Lord in perſon; but the Lord's Steward or his Bailiff is capable to receive Fealty in the Lord's behalf. 2. In reſpect that a Lord who hath but an Eſtate for his life in his Seigniory cannot receive Homage; but ſuch a Lord may receive Fealty.

3. They differ in regard of the Perſons by whom they are performed, and that two ways. 1. In reſpect that no Copy-holder is capable of doing Homage, but he is of doing Fealty, witneſs common experience. 2. In reſpect that a Tenant for life or years is unable to doe Homage; for 'tis a ground in Law, that none can doe Homage but Tenant in Fee-ſimple, or, *ad minimum*, Tenant in tail.

SECT.

SECT. XXI.

But a Tenant for life or for years are both able to doe Fealty, according to *Littleton*'s Rule, that Fealties are incident to every Tenure, except Tenures in Frank-almoigne and Tenants at will, contrary to some erroneous opinions.

Brudnel and *Toxley*, 5 H. 7. The Justices of the Common Place, 10 H. 6. held that Lessee for years cannot doe Fealty.

4. They differ in regard that Homage can be but once done unto one Lord by the same Tenant; and therefore 'tis agreed, that if Lands descend unto me which are holden of *J S* by Homage, and I doe unto him Homage, and after other Lands descend unto me by another Ancestor, which is holden of the same Lord by Homage, I shall not do Homage again, but Fealty onely, because I cannot twice become the Lord's man but the self-same Tenant may several times do Fealty unto the self-same Lord; and therefore if a Copy-holder surrendreth *White-acre* unto me, for his *white-acre* I should doe Fealty unto the Lord; if after another surrendreth unto me *Black-acre*, I shall doe Fealty likewise unto the same Lord. And thus much for Services of Submission.

SECT. XXII.

SErvices of *Profits* are of two sorts. 1. Tending to the publick Profit of the Commonweal; as when the Lord injoyneth his Tenant to amend High-ways, to repair decayed Bridges, or *similia*. 2. Tending to the private Profit of the Lord; as where the Tenant is injoyned to be the Lord's Carver, Butler, or Brewer, or is tied to pale the Lord's Parks, to tile the Lord's Houses, to thatch the Lord's Barns, and *similia*. And thus much for Corporal Services.

Annual Services are in number infinite, in nature all one, for they all tend to the increase of the Lord's Coffers, and are reserved in their Duties, as well for Copy-hold-Land as Free-hold-Land; though in the *Saxons* time, and long after the Conquest, they were never or seldome reserved for Copy-hold-Land, but onely for Free-hold-Land. I will not enumerate many particulars of Annual Services, for that were as endless as numbring the sands of the Sea; onely this I say, that those Annual Services which here come within the compass of my meaning consist all in Render, none in Feasance; for those Annual Services, as well as Accidental Services, which consist in Feasance,

ſance, I comprehend under Corporal Services.

Thus leaving both Corporal Services and Annual, I bend my courſe towards *Accidental* Services; which before I begin to particularize, obſerve theſe two things by the way.

1. That Accidental Services differ from Corporal and Annual Services in this, that moſt Accidental Services are incident to the Fee, and are due without ſpecial Reſervation of the Lord; but moſt Corporal Services and all Annual Services are due upon ſpecial Reſervation, and are not incident unto the Fee.

2. That Service is taken in a double ſenſe, *in ſtrictiori ſenſu*, and *in latiori ſenſu*. *In ſtrictiori ſenſu*, and in that ſenſe the *Feudiſts* define *Servitium fore munus obſequii clientelario, &c.* that Duty which the Tenant oweth unto his Lord, either in performing ſome corporal function, or in diſcharging ſome annual payment. *In latiori ſenſu*, and ſo it ſignifieth any Duty whatſoever accruing unto the Lord by reaſon of his Seigniory: and in this ſenſe theſe Accidental Services following (which *primâ facie* may ſeem better to rank under the Title of Juriſdictions, or rather under the name of the Fruits of a Manor) may very fitly be reduced to this kind of Services.

The Services I aim at, and which I mean to treat of particularly in this place, are these following.

1. *Wardships.*
2. *Herriots.*
3. *Reliefs.*
4. *Amerciaments.*
5. *Forfeitures.*
6. *Escheats.*

Now touching every one of these apart, and first of *Wardships.*

SECT. XXII.

Wardship est Custodia Haeredis infra aetatem existentis. *Polidore Virgil* saith that this was *novi vectigalis genus excogitatum* to help *Hen.* 3. being oppressed with much poverty, by reason he received the Kingdome greatly wasted by Wars of his Ancestors; and therefore needing extraordinary help to uphold his Estate, the use of Wardships was set abroach. But the 33. Chapter of the Grand Customary maketh mention of this to have been used among the *Normans* immediately after the erection of Manors, and that the use of Wardships was afoot before *Hen.* the third's time; as appeareth manifestly by *Glanvil*, who writeth very largely

in

in many places in his Book, and lived in *Hen.* the second's time. Guardians are either termed *Custodes*, or *Curatores*; *Custodes à Lege*, *Curatores ab homine*, as *Fleta* speaketh. The Civilians make three sorts of Guardians; 1. *Tutor testamentarius*, 2. *Tutor à Prætore datus*, 3. *Tutor legitimus*. This in every point agreeth with our Common Law. So we have *Tutorem testamentarium*, *viz.* where a man possessed of certain Goods and Chattells demiseth these unto his Child, and withall committeth the care of his Child's body and disposition of his substance unto some Friend: this Committee is *Tutor testamentarius*, unto whom belongeth the care and custody of the Child's body and the disposition of his substance, untill he accomplish the full age of fourteen years; and then immediatly he shall be out of Ward for his Body, but his Goods may be kept longer; for as for them they shall remain in the Trustees hands so many years as the Testator appointed by his last Will and Testament: for though it be not in the Father's power to restrain the liberty of his Child's Body longer then to the age of 14, yet the disposing of his Goods he may commit to any for as long time as himself shall think expedient. So by the Statute 32 and 34 *H.* 8.

Fleta lib. 1. cap. 5.

If a man be ſeiſed of Socage-Lands, not holden of the King *in Capite*, he may by his laſt Will and Teſtament commit the ordering of thoſe Lands to what Friend ſoever, for as many years as ſhall ſeem moſt convenient, and that Friend is *Tutor teſtamentarius*. Otherwiſe it is of Lands holden by Knight's Service; for it is not in any man's power by his laſt Will and Teſtament to deprive the Lord of that Duty which *de jure* belongeth to him: and therefore if a Copyholder dieth, his Heir under the age of fourteen, in regard that this priviledge of appointing the Heir a Guardian for the Copy-hold-Land, untill he accompliſh the age of fourteen, *de jure* appertaineth unto the Lord, it ſeemeth that the Father cannot prejudice the Lord in this kinde, by appointing him another Guardian by his laſt Will and Teſtament. *Hæc de Tutore teſtamentario.*

2. We have *Tutorem à Prætore datum, viz.* where a man deviſeth Goods unto his Childe, and appointeth him not a Guardian, then it is in the Ordinarie's hand to commit the ordering of the Infant's Goods unto ſome truſty Friend, unto the age of fourteen; at what time the Infant himſelf may chuſe a Guardian: for is a Rule in the Civil Law, *Invito Curator non datur.* And this Committee *eſt Tu-*

tor

tor à Prætore datus. Theſe Guardians, termed amongſt the Civilians *Tutores à Prætore dati*, are commonly called Guardians *pur nurture*: and thus in words we ſomewhat differ, in matter nothing. 3. We have *Tutorem legitimum, viz.* where the Intereſt doth *de jure* belong unto any, without the nomination of a private perſon, or the appointment of any publick Officer. And this Guardian is twofold; either *legitimus jure naturæ*, or *legitimus jure communi*. *Legitimus jure naturæ*, as where the Father or the Mother hath the Wardſhip of their Heirs apparent, be it Heir-male or female. *Legitimus jure communi*: and that Guardian is twofold; either Guardian in Chivalry, or Guardian in Socage. Guardian in *Chivalry* is, where any Tenant ſeiſed of Land holden by Knight's Service dieth, his Heir-male under the age of fourteen, and unmarried; then ſhall the Lord have the Ward both of the Lands and Body of this Heir-male unto the age of 21, becauſe the Law intendeth, that before that age the Heir is unable to perform Knight's Service, according to the Tenure. But the Heir-female ſhall be in ward no longer then to the age of ſixteen, becauſe the Heir-female, though ſhe her ſelf be unable to perform Knight's Service, yet at ſixteen ſhe is able to take a Husband, who in her behalf may doe Knight's Service;

Service; and therefore at thoſe years ſhe ſhall be out of Ward. Nay, ſometimes ſhe ſhall be out of Ward before ſixteen. And that is either where ſhe is married at the death of her Anceſtor, or where ſhe is any whit above fourteen when her Anceſtor dieth: in neither of theſe caſes ſhall ſhe be in Ward at all. For though the Statute of *W.* 1. *cap.* 11. giveth unto the Lord two years next enſuing the fourteenth; yet that is to be underſtood, where ſhe is under the age of fourteen and unmarried at her Anceſtor's death, and not otherwiſe. This for Guardian in Chivalry. Guardian in *Socage* is, where any one ſeiſed of Socage-Lands dieth, his Heir under the age of fourteen; then the next Friend unto the Heir, to whom the Inheritance cannot deſcend, ſhall have the Ward of the Heir's Body and of his Land untill the age of fourteen: as if the Land deſcendeth unto the Heir by the Father's ſide, then the Mother, or next Coſin of the Mother's ſide, ſhall have the Ward; and if the Land deſcendeth to the Heir by the Mother's ſide, then the Father, or next Coſin on the Father's ſide, ſhall have the Ward. To conclude, obſerve this difference between Guardian in Chivalry and Guardian in Socage: that the one receiveth the commodities of the Land to his

his own uſe, without giving any account; the other onely to the uſe of the Heir, to whom he ſhall be accountable whenſoever it ſhall pleaſe the Heir to call him to account after the age of fourteen.

Thus much concerning Wardſhips; a word concerning Herriots.

SECT. XXIV.

HErriot or *Harriot* cometh of the Latine word *Herus, Dominus*, becauſe it is a Duty appropriated to the Lord: or it is derived from the *Saxon* word *Here, Exercitus*, becauſe in the *Saxons* time, when the name of Herriot was firſt known, Herriot ſignified nothing elſe but a Tribute given to the Lord for his better preparation towards War, as a Horſe trapped, or a Spear, or Armour, or a Sword, or ſome ſuch like military Weapon: and therefore in this ſenſe, importing a thing appertaining to the War, and being due unto the Lord, by reaſon of this Service which Tenants owe unto their Lords in any warlike imployments, it may very fitly be derived from hence. This their Herriot among the *Saxons* little differed from our Relief at this day, howſoever now they differ *ex diametro.*

Vide Lamb. in his explication of *Saxon* words, *tit.* Herriot.

tro. But let us examine the nature of our Herriots at this day, and not search into the nature of their Herriots in those days; for that were to examine the nature of Reliefs, not Herriots.

Britton, cap. 69. *Britton* thus speaketh: A Herriot is a Render made at the death of a Tenant to his Lord of the best Beast found in the possession of the Tenant deceased, or of some other, according to the ordinance and assignment of the party deceased, to the use of the Lord; which toucheth not the Land at all, nor the Heir, nor his Inheritance, neither hath any comparison to a Relief, for it proceedeth rather of grace and good will then of right, and rather from Villains then Freemen. To this effect speaketh

Fleta, lib. 4. cap. 18. *Fleta: Herriettum est quædam Præstatio ubi Tenens, liber vel servus, in morte sua Dominum suum respicit de meliori Averio suo, vel de secundo meliori: quæ quidem Præstatio magis fuit de gratia quàm de jure, & nullam habet comparationem ad Relevium, eò quòd Hæredi non continget, quia factum Antecessoris.*

This our Herriot is twofold; Herriot-Service, Herriot-Custome. *Herriot-Service* is that Herriot which is never due without special Reservation, and is seldome reserved upon any less Estate then an Estate of Inheritance. *Herriot-Custome* is that Herriot which is

is never due upon ſpecial Reſervation, but is challenged upon ſome particular Cuſtome, and is uſually payd upon an Eſtate for life, and for years, as well as upon an Eſtate of Inheritance. Touching the original of theſe Herriots, doubtleſs they are not of that antiquity which the name doth promiſe: for though among the *Saxons* the name of Herriot was known, yet the nature of both theſe, Herriot-Services and Herriot-Cuſtome, was utterly unknown untill the coming of the *Normans*, who immediately upon the Conqueſt changed the name of the *Saxons Herriot*, and termed it by the name of a *Relief*, leaving notwithſtanding ſome difference betwixt them; for where the *Saxons* Herriot conſiſted uſually in the payment of ſome military Weapon, our Relief in thoſe days conſiſted wholly in the payment of a certain ſumme of money. And preſently after the *Normans* had thus wholly altered the name, and ſomewhat altered the nature of the *Saxons* Herriot, then upon the parcelling of their Lands unto inferiour Tenants, they invented this new kind of Service, unknown amongſt the *Saxons*, and termed it by the name of Herriot-Service. Afterward, upon the Infranchiſement and Manumiſſion of certain Villains, theſe Herriot-Cuſtomes were given to the Lords as a continual future gratulation. So

that

that originally, as *Britton* and *Fleta* well note, they were granted meerly *ex gratia*; but now time hath effected it that they are challenged *ex debito*.

Thus much of Herriots: a word of Relief.

SECT. XXV.

Relief is a certain ſumme of money which every Free-holder payeth unto his Lord, being at full age at the death of his Anceſtor, which in effect ſoundeth all one with theſe words of *Glanvil*: *Hæredes majores ſtatim poſt deceſſum Anteceſſorum ſuorum poſſunt ſe tenere in hæreditate ſua; licèt Domini poſſint Feodum ſuum cum hærede in manus ſuas capere: ità tamen moderatè id fieri debet, nè aliquam diſſeiſinam hæredibus faciant; poſſunt enim hæredes, ſi opus fuerit, violentiæ Dominorum reſiſtere, dum tamen parati ſunt Relivium & alia retro ſervitia eis indè facere.* With this agreeth the definition of *Hotoman*; *Relivium eſt honorarium quod novus Vaſſallus introitûs causâ patrono largitur, quaſi morte uſuali alius, vel alio quo caſu Feodum ceciderit, quod jam à novo ſublevatur.* This Relief by the ancient Civil Law was termed *Introitus*; and *Vincentius* termeth it *Præſtationem ſeu Solutionem*

Glanv. lib. 7. cap. 9.

Hotoman. Comment. de verbo Feod. & verbo Relivium.

tionem factam pro confirmatione ſeu renovatione poſſeſſionis, and that very aptly: for indeed Relief is the key which opens the gate to give the Heir free paſſage to the poſſeſſion of his Inheritance. *Bracton* giveth this reaſon why it is called a Relief, *Quia hæreditas, quæ jacens fuit per anteceſſoris deceſſum, releviatur in manus hæredis*; *& propter factam Relevationem facienda erit ab hærede quædam præſtatio quæ dicitur Relevium*. *Skene* fondly imagineth that it taketh his name *à relevando*, in another ſenſe; for, ſaith he, Relief is given by the Tenant or Vaſſal being of perfect age, after the expiring of the Wardſhip, to the Lord of whom he held his Land by Knight's Service, that is by Ward and Relief; and by payment thereof he relieves, and, as it were, raiſeth up again his Lands, after they were fallen down into his Superiour's hands by reaſon of Wardſhip. But theſe words of *Glanvil* will ſerve to convince him of errour; *Tandem verò eodem ad ætatem perveniente, & factâ ei hæreditatis reſtitutione, quietus erit à Relivio ratione cuſtodiæ*. This Relief is twofold; 1. Relief-Service, 2. Relief-Cuſtome. *Relief-Service* is that which is paid upon the death of any Free-holder. *Relief-Cuſtome* is that which is paid

Bracton, lib. 2. cap. 36.

Skene de verb. ſign. tit. Relief.

Glanvil, lib. 9. cap. 9.

paid upon the death, change, or alienation of any Free-hold, according to the Cuſtome of the place; in many places half a year's profit, in many places a whole year's profit. And therefore where *Bracton* ſaith, *Quòd dat Domino Relevium qui ſuccedit jure hæreditatis, non autem is qui acquirit*; that is to be taken with this caution, *niſi illud etiam conſuetudine præſtare debet qui acquirit.* Theſe Reliefs are paid as well for Lands holden in Socage, as Lands holden by Knight's Service. For Lands holden in Socage in this manner: If a Tenant in Socage die, his Heir above the age of fourteen, then ſhall the Heir double the Rent that his Anceſtor was wont to pay to the Lord; as if the Tenant holdeth of his Lord by Fealty and five ſhillings, then ſhall the Heir double the Rent, and ſhall pay ten ſhillings, *viz.* five ſhillings in the name of a Relief, over and above the five ſhillings which he payeth for his Rent. For Lands holden by Knight's Service in this manner: If a Tenant by Knight's Service dieth, his Heir of full 21, if he holdeth by an intire Knight's Fee, he payeth five pound, if by half a Knight's Fee, then he payeth fifty ſhillings, if by a quarter of a Knight's Fee, he payeth 25 ſhillings; and ſo proportionably, who ſo holdeth more, payeth more, and who holdeth leſs, payeth leſs. Yet for the fuller

ler apprehenſion of the quantity of a Relief, let us examine what a Knight's Fee ſignifieth. A Knight's Fee is ſo much Land as in ancient time was accounted a ſufficient living for a Knight: but whether this was rated according to the quantity, or according to the value, *Cauſidici certant, & adhuc ſub judice lis eſt.* Some hold according to the quantity, and that, according to the ſeveral computations uſed in ſeveral places, a Knight's Fee was either more or leſs; as in the Dutchie of *Lancaſter* a Knight's Fee contained four Hides of Land, every Hide four Carues of Land, every Carue four Yard-lands, every Yard thirty Acres; and every Knight's Fee 1920 Acres. According to other computations a Knight's Fee contained 680. But according to moſt computations a Knight's Fee contained five Hides of Land, every Hide four Yard-lands, every Yard-land 24 Acres: according to which computation a Knight's Fee contained 480 Acres. So that according to ſeveral computations a Knight's Fee was more or leſs. Others hold that a Knight's Fee was meaſured according to the quality, not according to the quantity; according to the value, not according to the content. And amongſt theſe ſome hold that Land to the value of fifteen pound *per annum* made a Knight's Fee; and therefore

Camden in suâ Britan. *Camden* saith that, *Sub* Henrico *tertio quodammodo coacti fuerunt Equites fieri quotquot libras quindecim ex annuis terrarum redditibus colligârunt:* and out of *Matthew Paris* he writeth, that *anno* 1256. *Exiit Edictum regium, præceptúmque est & acclamatum per totum regnum, ut qui haberet* 16 *libratas terræ & supradict. armis redimitus tyrocinio donaretur, ut* Anglia, *sicut* Italia, *militiâ roboraretur: & qui nollent, vel qui non possent honorem statûs militaris sustinere, pecuniâ se redimeret.* Others hold, that *census equestris* was forty pound Revenue in Free-hold-Land: and of this opinion is Sir *Thomas Smith.* Others held, that *census equestris* was twenty pound Revenue: and this opinion is confirmed by many authorities and reasons cited in *Anth. Low's* Case. 1. By an ancient Treatise, *De modo tenendi Parliamentum tempore Regis* Edwardi *filii* Etheldred; where it appeareth, *quòd Comitatus constabat ex viginti Feodis unius militis, quolibet Feodo computato ad viginti libratas. Baronia constabat ex* 13 *Feodis, & tertia parte unius Feodi militis. Secundùm computationem prædictam, unum Feodum militis constabat ex terris ad valentiam* 20. *li.* And therefore where the Statute of *Ed.* 2. *de Militibus* provideth that a Knight's Living shall be measured

Smith de Rep. pag. 31, 32, 33.

by

by the value of twenty pound *per annum*, this is but an affirmance of the Common Law. 2. This is ſtrengthened by the words of the Statute of *W.* 1. *cap.* 36. And by *Fitzh.* this ſeemeth ſomething pregnant, for in both theſe places Socage-lands to the value of twenty pound *per annum* are put in equipage with a Knight's Fee. 3. In a Writ of Meſne, brought *per Ranulphum de Normanville petentem verſus Luciam de Kyme tenentem*, *P.* 3 *E.* 1. appeareth, that twelve Carues of Land made a Knight's Fee, every Carue being in ancient time of the value of five nobles *per annum*; according to which account a Knight's Fee amounted to twenty pound *per annum*. Theſe are the ſeveral opinions touching the quantity of a Knight's Fee. Embrace of theſe which ſhall ſeem moſt conſonant to reaſon. For my own part, I think that in the ancient time a Knight's Fee was meaſured according to the number of the Acres; but in theſe days, according to the value of the Land. The reaſon of this alteration is, That though in ancient time, as well as in theſe days, ſome Lands were far more fruitfull then others; yet the value of every quantity of Land was certainly rated, according to the Cuſtome of the places, and never upon any occaſion was the Land increaſed or decreaſed: and therefore were they

Fitz. nat. Brevium, fol. 62.

to examine whether any man had a ſufficient Living for a Knight, they would look no farther then to the quantity of his Land; for by the quantity they could preſently judge the value. But now the value is not certainly rated in any place, but increaſeth and decreaſeth upon every occaſion; and therefore reaſon requireth, that in theſe days a Knight's Fee ſhould be meaſured according to the value, not according to the quantity of the Land; for, by reaſon of the different value of the Land, one may be better able to maintain the dignity of a Knight with two hundred Acres in ſome place, and of ſome Land, then another with four hundred Acres of other Land. But howſoever it is, whether a Knight's Fee be rated according to the value, or according to the quantity, let it here reſt.

Now give me leave to examine at what time and by what Law it was firſt provided, that for every Knight's Fee the fourth part of a Knight's Revenue ſhould be payd in the name of a Relief, *viz.* 5 *li*; for every Baron's Fee, the fourth part of a Baron's Revenue, *viz.* one hundred marks; for every Earl's Fee, the fourth part of an Earl's Revenue, *viz.* one hundred pound. Surely Reliefs were paid in this manner before the Statute of *Magna Charta*: and that is ſomewhat pregnant by this, that by the very

very words of that Statute this Relief is termed *Antiquum Relevium*: and by *Glanvil*, who writ before the making of this Statute, this is somewhat manifeſt; for he ſpeaketh to this effect; *Dicitur rationabile Relevium alicujus, juxta conſuetudinem Regni, de Feodo unius Militis centum ſolidos, de Soccagio verò quantum valet cenſus illius Soccagii per annum: de Baronia verò nihil certum ſtatutum eſt, quia juxta voluntatem & miſericordiam Domini Regis ſolent Baroniæ capital. de Reliviis ſuis Domino Regi ſatisfacere.* From whence I gather, that Statute of *Magna Charta* was in part an affirmance of the Common Law, in part an inſtitution of a new Law. Glanvil, *lib.* 9. *cap.* 9.

Touching Relief paid by Knights, it was but an affirmance of the Common Law, becauſe they were certain before the Statute. Touching Reliefs paid by Barons, it was an inſtitution of a new Law, becauſe they were before uncertain. And the reaſon why Dukes and Vicounts are not mentioned in this Statute, as well as Earls, Barons and Knights, is this; becauſe when that Statute was made, there was neither Duke, Marqueſs or Vicount in *England*: The firſt Duke that ever was in *England* ſithence the Conqueſt was the black Prince, eldeſt Son to *Ed.* the 3. The firſt Marqueſs that ever was in *England* was *Robert* Earl of *Oxford*, created

by *R.*2. And the first Vicount that ever was in *England*, *Dominus de Bello monte*, created by *Hen.* 6.

But though at the making of this Statute these Dignities were unknown, yet they are comprehended under the equity of the Statute, and according to their severall Dignities shall pay Relief unto the King, a Duke two hundred pounds, a Marquesse two hundred marks, and so ratably and proportionably. But to conclude, let us compare Herriots and Reliefs together, and observe in what they differ.

1. They differ in this, that a Herriot lieth in Prender, and a Relief in Render. 2. In this, that a Herriot is paid in the name of a Tenant deceased; but a Relief in the name of an Heir who is become Tenant. 3. In this, that Herriots are paid by Copy-holders as well as Free-holders; but Relief by Free-holders onely. 4. In this, that Herriots are ever due upon a special Reservation, or upon some particular Custome; but Reliefs are incident to the Fee, and are due without Reservation or Custome, contrary to the opinion of *Vincentius*, who holdeth a Relief *extrinsecam fore prestationem, & non inesse Feodo.*

Thus much touching Reliefs: a word touching Amerciaments.

SECT.

SECT. XXVI.

A *Merciament*, is a Pecuniarie puniſhment for any offence committed againſt the Lord of any Manor; or (as ſome more at large define it) it is a certain ſumme of money impoſed upon the Tenant by the Steward by Oath, and preſentment of the Homage, for the breach of any by-Law made either for the profit of the whole Kingdome, or for the benefit of the little Commonwealth among themſelves, or for default of doing Suit, or for other miſdemeanors puniſhable by the ſame Court, infinite in number and quality. And this word Amerciament taketh his name from being in the Lord's mercy, to be puniſhed more or leſs at his will and pleaſure; and it differeth from a Fine in divers reſpects.

1. In that whoſoever is fined may lawfully be impriſoned, but whoſoever is amercied cannot. 2. In this, that Amerciaments are incident unto Court-Barons as well as unto Court-Leets; and Fines are never incident to any Court-Barons, but to Court-Leets onely, or other Courts of Record. 3. That Amerciaments are incident unto every Manor whatſoever; but Fines are incident unto ſome few Manors onely. The reaſon of this diffe-

rence is partly grounded upon the former difference: for ſithence Amerciaments are incident unto every Court-Baron, and Court-Barons are incident unto every Manor; *ſequitur ex conſequente*, that unto every Manor Amerciaments are incident: but *ex adverſo*, Fines being incident unto Court-Leets onely, and thoſe Court-Leets being in ſome few Manors onely, not in every Manor expreſly; *ſequitur*, that Fines are not incident unto every Manor, but unto ſome few Manors onely. 4. In this, that Amerciaments are afferable *per pares, per ſacramentum proborum & legalium hominum de vicineto, qui, ſecundùm modum delicti, majori vel minori amerciamento delinquentem mulctare poſſunt*: but Fines are never afferable in this kind; for look what Fine ſoever the Court impoſeth upon the Delinquent, that bindeth ſufficiently, without farther Afferance. Give me but leave to ask two queſtions. 1. When had this Afferance its firſt conception or creation? 2. How may Amerciaments in Court-Leets be diſcerned and diſtinguiſhed from Fines impoſed in the ſame Court, ſince they are both pecuniary puniſhments for offences committed? Touching the firſt queſtion, I think this Law of Afferance was before the Statute of *Magna Charta*; for *Glanvil* thus ſpeaketh of it; *Eſt autem*

Glanv. lib. 1. cap. 11.

Miſe-

Miſericordia Domini Regis, quo quis per juramentum legalium hominum de vicineto eatenus amerciandus eſt, ne aliquid de ſuo honorabili contineat amittat: and therefore by this appeareth, that this Statute of *Magna Charta* was but an affirmance of the Common Law in this point of Afferance. Touching the ſecond queſtion, know that 'tis not in the power of the Court to impoſe a Fine or an Amerciament at their election for any offence committed, but ſtill the quality of the puniſhment muſt neceſſarily ſute with the quality of the offence: from the ſeveral natures of offences committed, ariſe the ſeveral names of puniſhments inflicted. The offences in reſpect of the place are twofold, and in reſpect of the perſons twofold. In reſpect of the Place, 1. Offences committed *extra Curiam*, of which the Steward by no common poſſibility can have cognizance without the preſentment of the Homage; and therefore the power of preſenting them, and impoſing puniſhments for them, belongeth unto the Jurors of the Leet, and not unto the Steward: and theſe puniſhments thus impoſed are termed *Amerciaments*. 2. Offences committed *in Curia*, of which the Steward can take ſufficient notice, without the helping hand of the Homage; and as therefore the puniſhments of theſe offences belong unto the Steward, not unto the Jurors:

and

and theſe puniſhments thus impoſed are termed *Fines*. Thus in reſpect of the Place offences are twofold. In reſpect of the Perſon they are likewiſe twofold. 1. Offences committed by private perſons. 2. Offences committed by publick Officers and Miniſters of the Court, in the adminiſtration of their office. Puniſhments impoſed for offences of the former rank are termed *Amerciaments*, of the latter rank *Fines*; the one afferable *per pares*, the other not. And the reaſon why the Statute of *Magna Charta* in this point of Afferance extendeth not unto any offences committed in Court by private Perſons or publick Officers, neither unto any offences committed *extra Curiam*, by publick Officers in adminiſtration of their Office, is this, Becauſe though the words of the Statute are generally extending unto all offences whatſoever; yet the intent of the Statute-makers was not to make the Jurors Afferors *in omnibus delictis mulctandis, ſed in iis tantummodo puniendis quorum certam poſſint habere notitiam & intelligentiam*, as *Fleta* ſpeaketh. And therefore ſithence the Steward hath more certain notice of offences committed *in Curia*, by what perſons ſoever, then the Jurors

Co. 8. Griſſleg's Caſe.

Fleta, lib. 1. cap. 38.

rors have, and can better judge and diſcern of the natures and qualities of offences committed *extra Curiam* by publick Officers then Jurors can; therefore ſurely the intent of this Statute was, to leave the puniſhment of theſe offences to the diſcretion of the Steward, and not the Afferance of the Homage.

Thus much concerning Amerciaments: a word concerning Forfeitures.

SECT. XXVII.

Forfeiture cometh of the *French* word *Forfaict, Scelus; quia ſcelerum & delictorum perpetratio eſt forisfacturarum cauſa & origo.* In our Language it ſignifieth the effect of tranſgreſſing, rather then the tranſgreſſion it ſelf; I mean, it ſignifieth the penalty for the offence committed, rather then the act it ſelf whereby the offence it ſelf is perpetrated: and it extendeth both unto Lands and unto Goods; unto Lands, both Copy-hold and Free-hold.

Touching the cauſes from whence ſpringeth the Forfeiture of Copy-hold-Lands, I ſhall have occaſion to ſpeak more liberally in another place, and therefore I will ſilently paſſe them over, ſpeaking ſome few words touch-

touching the causes from whence Forfeitures of Free-hold-Land arise.

The causes are many, amongst the which I have observed, 1. That if any Free-holder alieneth his Land in Mortmain, he forfeiteth his Free-hold. 2. If a Free-holder ceaseth for the space of two whole years to perform such Services, or to pay such Rents, as he is tied unto by his Tenure, and hath not upon his Land sufficient Goods or Chattels to be distrained, he forfeiteth his Free-hold. 3. If any Free-holder infringeth any condition whereunto he is tied, he forfeiteth his Free-hold.

Touching the causes from whence grow the Forfeitures of Goods, they are likewise in number many; and from the several causes of forfeiting Goods arise several names of Goods forfeited. 1. If a Felon stealeth Goods, and upon pursuit made waiveth these Goods, and leaveth them in any part of the Manor, and be not attached upon the fresh suit of the Owner; then are these Goods forfeited to the Lord, and are termed *Waives*. 2. If any Beasts are found wandering in any place, and be proclaimed in three Market-Towns adjoyning, and are not claimed by the Owner in a year and a day; then are the Beasts forfeited to the Lord who hath such a Liberty, and are termed *Estrays*.

ſtrays. 3. If any ſuffer Shipwreck upon the Seas, and through the violence of the Waves Goods are caſt upon the Shore, and, being ſeiſed by the Bailiff, are not claimed within a year and a day after the Seiſure; then are theſe Goods forfeited to the Lord who hath that Franchiſe, and are termed *Wrecks.* 4. If one come to a violent end without the fault of any reaſonable creature, then immediately that thing which is the cauſe of that untimely death becometh forfeited unto the Lord; and it is termed a *Deodand*, as this old Verſe teſtifieth, *Omnia quæ movent ad mortem ſunt Deodanda:* as if a Horſe ſtriketh his Keeper, and killeth him; or if a man driveth his Cart, and, ſeeking to redreſs it, falleth, and the Cart-wheel, running over him, preſſeth him to death; or if one, felling a Tree, giveth warning to comers by to look to themſelves, and, notwithſtanding warning given, ſome body is ſlain by the fall of the Tree; the Horſe in the firſt caſe, the Cart and the Horſes in the ſecond caſe, and the Tree in the third caſe, are forfeited to the Lord as Deodands. Many other ſorts of forfeited Goods I might adde unto this, but I will forbear to enumerate any more in this kind, and to ſpeak more largely of theſe which I have already enumerated, for three ſpecial reaſons.

1. Becauſe

1. Becauſe they are Duties accruing unto the Lord not meerly from the Tenants, nor ſolely by the Act of the Tenants, but moſt commonly from Strangers, and by the ſole act of Strangers; and therefore I confeſs are not aptly ranked under the name of Services.

2. Becauſe a perfect Manor may well ſubſiſt without their aſſiſtance, ſince they adde nothing to the perfection of the eſſence of a Manor. 3. Becauſe they are not incident unto every Manor, but unto ſuch Manors onely as can challenge them either by ſpecial Preſcription, or by Patent from the King: for primarily and originally theſe Forfeitures of Goods belonged to the King, for theſe reaſons eſpecially; becauſe what Goods ſoever have no certain owner known to challenge intereſt in them, as Waives, Eſtrays, and Wrecks, the property of ſuch Goods belongs unto the King *virtute Prærogativæ*: and thus much *Bracton* intimateth, when he ſaith, *Sunt alia quædam quæ in nullius bonis eſſe dicuntur, ſicut Wreccum maris, &c. & aliæ res quæ Dominum non habent, ſicut animalia vagantia, & quæ ſunt Domini Regis propter privilegium marium.* The reaſon why Deodand's are forfeited to the King is this:

Deodands were originally invented for the pacifying of God's wrath and the appeaſing of

of God's anger; and theſe things thus forfeited were, according to the true intendment of the Law, to be ſold, and money diſtributed among the poor; and therefore upon whom could the Law have better conferred this benefit, or rather impoſed this charge, then upon the King, who repreſenteth God's perſon upon the earth, and who the Law preſumeth will deal more juſtly and truly, nay, more liberally and bountifully with the poor in this kind, then any inferiour Lord, who peradventure out of his uncharitableneſs, peradventure out of want, will be ſo far from adding any thing to that which is due, that he will rather unjuſtly ſubtract part, or unconſcionably detain the whole?

Since therefore theſe Forfeitures of Goods neither adde to the perfection of a Manor, neither are incident unto every Manor, to ſpend any farther time about a Subject ſo ſuperfluous would ill beſeem this ſmall Treatiſe, wherein the ſcope and end I aim at is this, onely to preſent to your view what things ſoever are neceſſarily requiſite to the eſſence of every Manor, and what Services ſoever are incident unto every Manor.

And thus much concerning Forfeitures: a word concerning Eſcheats.

SECT.

SECT. XXVIII.

Escheats cometh of the *French* word *Echeer, excidere,* and are termed *Excadentiæ,* which imports Lands fallen into the Lord's hand for want of Heir general or special to inherit them. But before the Lord enter into an Escheat in this kind, the Homage ought to present it, and being presented, Proclamation ought to be made to give notice to the World, that if any man come in and justly claim, he shall be received: the Homage then finding it clear, intitle the Lord as to Lands Escheated.

Besides this ordinary sort of Escheat, there is another sort of Escheat; and that is, where any Free-holder committeth Felony, and is attainted, the King shall have *Annum, diem & vastum*; and then it cometh unto the Lord as an Escheat.

Thus much concerning the nature of Services in general, and there are so many particular Services *in individuo*, that I might insist in millions more; but fear of incurring the censure of being over-tedious restraineth the forwardness of my hand: yet sithence occasion is so favourable to me, I will presume so much upon your patience, as to lay open the several

ral remedies which the Law hath provided for the obtaining of thoſe ſeveral Services before mentioned, if perchance they be wrongfully deceived by the Tenants; and, for method ſake, I will begin with *Corporal* Services.

SECT. XXIX.

IF any Free-holder refuſeth to doe Homage or Fealty, which are Corporal Services of Submiſſion; or to mend High-ways, repair decayed Bridges, or *ſimilia*, which are Corporal Services tending to the publick Profit of the Commonweal; or to diſcharge the office of a Carver, a Butler, a Brewer, or ſuch like, or to pale the Lord's Park, to tile the Lord's Houſes, or to thatch his Barns, or *ſimilia*, which are Corporal Services tending to the private Profit of the Lord; If, I ſay, any Free-holder refuſeth to doe any of theſe Services, being bound unto them by his Tenure, then may the Lord lawfully diſtrain his Cattel or his Goods, and detain them untill ſatisfaction be given by performing ſuch Services as the Law doth require. And the ſame remedy which the Law hath provided for Corporal Services, is likewiſe provided for *Annual* Services.

SECT. XXX.

FOR if any Free-holder refuseth to pay any annual Rent, or to discharge any annual Payment, according to his Tenure; then may the Lord lawfully distrain, and, in a Replevin brought by the Tenant, may avow the Distress, and justifie the taking. But no Action of Debt will lie for these Annual Services, no more then for Corporal Services: for it is a ground in Law, that as long as the Rent continueth of any Estate or Frank-tenement, no Action of Debt lieth for the Arrerages of the Rent, nor for any other Service whatsoever. And therefore if a Lease for life be made reserving Rent, the Lessor cannot maintain an Action of Debt for the Arrerages of this Rent as long as the Estate continueth; but presently upon the determination of the Estate an Action of Debt lieth for the Arrerages of the Rent incurred before the time of the determination. But what? hath the Law provided no other remedy for those Annual Services then a Distress? Surely no, before Seisin none; but after Seisin once gained, 'tis at his election, either to distrain, or to bring an Assize.

And thus much touching Remedies for Corporal and Annual Services.

SECT.

SECT. XXXI.

Accidental Services are gotten by many differing means. 1. By Seisure onely, as the Wardship of the Heir's Body, together with the Waives, Estrays, Wrecks, Deodands, and such like Forfeitures of Goods. 2. By the Entry onely, as the Wardship of the Heir's Land, together with Lands forfeited to the Lord, either upon the breach of some Condition, or upon an Alienation in Mortmain. 3. By Seisure or Distress, as Herriot-Services, contrary to the opinion of some, who held them gainable by Distress onely, and not by Seisure. 4. By Action, as Herriot-Customes; for upon the Eloignment of the best Beast, the Lord may maintain an Action of Detinue against the Heir. 5. By Entry or Action, as Lands forfeited to the Lord by the cessing of his Tenant, or Escheat accruing unto the Lord, either upon the Attainder or death of his Tenant without Heir: in the first, the Lord may enter or maintain a Writ of *Cessavit*; in the second, the Lord may enter or maintain a Writ of Escheat. 6. By Distress or Action, as Reliefs and Amerciaments. For Reliefs the Lord may distrain, or bring an Action of Debt. Neither doth this any whit impugn the former

mer ground, that as long as the Rent doth continue, *&c.* becauſe indeed Relief is the fruit and approvement of Services, rather then any Service. And for Amerciaments the Lord may either diſtrain or bring an Action of Debt. Other remedy the Law hath provided againſt Strangers for detaining of theſe Duties from the Lord, as to inſiſt in one: If a Stranger will detain the Ward's Body or the Ward's Land from the right Lord, a Writ *De recto de cuſtodia terræ & hæredis* lieth againſt the Stranger. But to meddle with Strangers were to wander out of the little Commonweal; and therefore to keep my ſelf within my bounds and limits, I will here conclude touching the two Material Cauſes of a Manor, *viz.* Demeſnes and Services. A word touching the Efficient Cauſe of a Manor, and then I will end the Definition of a Manor.

The Effieient Cauſe of a Manor is expreſſed in theſe words, *of long continuance:* for indeed Time is the Mother, or rather the Nurſe, of Manors; Time is the Soul that giveth life unto every Manor, without which a Manor decayeth and dieth: for 'tis not the two Material Cauſes of a Manor, but the Efficient Cauſe, (knitting and uniting together thoſe two Material Cauſes) that maketh a Manor. Hence it is that the King himſelf cannot cre-

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ate a perfect Manor at this day; for such things as receive their perfection by the continuance of time come not within the compass of a King's Prerogative; and therefore the King cannot grant Free-hold to hold by Copy, neither can the King create any new Custome, nor doe any thing that amounteth to the creation of a new Custome. And therefore a Composition made between the King and his Tenant, where he hath Herriot-Custome, to pay 10 *li.* in lieu thereof every time it falleth, is no binding Composition: for this amounteth to the creation of a new Custome. *Et hæc omnia & similia sunt temporum, non regum seu principum, opera:* which fully verifieth the old saying, *Plus valet vulgaris consuetudo quàm regalis concessio.* This is the sole cause why the King cannot create a perfect Manor at this day: and this is the chief cause why a common person cannot create a perfect Manor, but not the sole cause; for there is this cause farther, A perfect Manor cannot subsist without a perfect Tenure, between very Lord and very Tenant; but a common person cannot create a perfect Tenure, and consequently cannot create a perfect Manor. Before the Stat. of *Quia emptores terrarum*, if any Tenant seised of Land in Fee-simple had infeoffed a Stranger, he might have reserved what Services he thought fit;

or had he reserved no Services, yet the Law would have implied a perfect Tenure between the Feoffor and the Feoffee, for the Feoffee was to hold of the Feoffor by the same Services that the Feoffor held over of his Lord paramount: but since this Statute, if a Tenant seised of Land in Fee infeoffeth a Stranger, neither by the expres Reservation of the Feoffor, nor by the implied Reservation of the Law, can there be a perfect Tenure created at this day between the Feoffor and the Feoffee; for the Feoffee shall hold immediately of the Lord paramount, not of the Feoffor. And farther, as the King can doe nothing which amounteth to the creation of a new Custome; so a common person can doe nothing which amounteth to the creation of a new Tenure. And therefore if there be Lord and Tenant by 10. s. Rent, and the Lord will confirm the Estate of a Tenant *Tenend.* by a Hawk, a pair of Gilt spurs, a Rose, or *similia*, this is a void confirmation: otherwise had it been if the Lord had confirmed the Estate of the Tenant *Tenendum per* 5. s. that had been a good confirmation, because it tendeth onely to the abridgement of an old Tenure, and not to the creation of a new. And as it is with a Confirmation, so it is with a Composition. Upon the reason of this ground it is, that if the Lord

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of a Manor purchaſe forein Land, lying without the Precincts and bounds of the Manor, he cannot annex this unto the Manor, though the Tenants be willing to doe their Services; for this amounteth to the creation of a new Tenure, which cannot be effected at this day. And therefore if a man having two Manors, the Lord would willingly have the Tenants of both theſe Manors to doe their Suit and Service to one Court, this is but loſt labour in the Lord to practiſe any ſuch Union; for notwithſtanding this Union they will be ſtill two in nature, howſoever the Lord covet to make them one in name; and the one Manor hath no warrant to call the Tenants to the other Manor, but every act done in the one, to puniſh the offenders in the other, is traverſable. Yet if the Tenants will voluntarily ſubmit themſelves to ſuch an Innovation, and the ſame be continued without contradiction, time may make this Union perfect, and of two diſtinct Manors in nature make one in name and uſe. And ſuch Manors peradventure there are thus united by the conſent of the Tenants and continuance of time, but the Lords power of it ſelf is not ſufficient to make any ſuch Union, *causâ quâ ſuprâ*. But if one Manor holdeth of another by way of Eſcheat, theſe two Manors may be united together: *fortior*

enim eſt diſpoſitio Legis quàm hominis. But in this, that I exclude common perſons from being able to create a Tenure, I may ſeem to impugn many Authorities which hold at this day that a Tenure may be created by a common perſon. For to clear this colour of contradiction, know that Tenures are twofold. Firſt, imperfect: as where a man maketh a Leaſe for years or for life, or a Gift in tail; here is an imperfect Tenure between the Leſſor and the Leſſee, the Donor and the Donee; and this imperfect Tenure I confeſs may be created by a common perſon at this day. Secondly, perfect, between very Lord and very Tenant in Fee: and ſuch a Tenure a common perſon could never create ſince the Statute of *Quia emptores terrarum.* And conſequently a common perſon cannot create a perfect Manor ſithence, for without a perfect Tenure a perfect Manor cannot ſubſiſt.

Thus much touching the definition of a Manor, thus much, I ſay, touching the two Material Cauſes, together with the Efficient Cauſe. A word of another Cauſe of a Manor, which appeareth not in the Definition ſo manifeſtly as the other Cauſes do: this is a Cauſe which among the Logicians is termed *Cauſa ſine qua non*, and that is a Court-Baron; for indeed that is the chief prop and pillar of a

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Manor, which no ſooner faileth, but the Manor falleth to the ground. If we labour to ſearch out the antiquity of theſe Court-Barons, we ſhall finde them as ancient as Manors themſelves. For when the ancient Kings of this Realm, who had all the Lands of *England* in Demeſne, did confer great quantities of Land upon ſome great Perſonages, with liberty to parcell the Land out to other inferiour Tenants, reſerving ſuch Duties and Services as they thought convenient, and to keep Courts where they might redreſs Miſdemeanours within their Precincts, puniſh Offences committed by their Tenants, and decide and debate Controverſies ariſing within their Juriſdiction; theſe Courts were termed Court-Barons, becauſe in ancient time ſuch perſonages were called Barons, and came to the Parliament, and ſate in the upper Houſe: but when time had wrought ſuch an alteration, that Manors fell into the hands of mean men, and ſuch as were far unworthy of ſo high a calling; then it grew to a cuſtome, that none but ſuch as the King would ſhould come to the Parliament, ſuch as the King for their extraordinary wiſedome or quality thought good to call by Writ, which

Vide Lamb. in his explication of *Saxon* words, *verbo Thanus*. *Bacon* in his Elements of the Law, *fol.* 41, 42, 43.

which Writ ran, *hâc vice tantùm.* Yet though Lords of Manors loſt their names of Barons, and were deprived of that Dignity which was inherent to their names, yet their Courts retain ſtill the name of Court-Barons, becauſe they were originally erected for ſuch perſonages as were Barons: neither hath time been ſo injurious as to eradicate the whole memory of their ancient Dignity, in their name there is ſtamps left of their Nobility, for they are ſtill intituled by the name of *Lords.* Theſe Courts differ from Court-Leets in divers reſpects. 1. In this, that Court-Barons by the Law may be kept once every three weeks, or (as ſome think) as often as it ſhall pleaſe the Lord; though for the better eaſe both of Lords and Tenants they are kept but very ſeldome: but a Court-Leet by the Statute of *Magna Charta* is to be kept but twice every year; one time within the moneth after *Eaſter*, and another time within a moneth after *Michaelm.*

Magna Charta, c. 35. 31 E. 3. ca. 15.

2. In this, that Court-Barons may be kept in any place within the Manor, (contrary to the opinion of *Brian*;) but a Court-Leet by the Statute of *Magna Charta* is to be kept *in certo loco ac determinato* within the Precinct. 3. In this, that originally Court-Barons belonged unto inferiour Lords of Manors; but

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Court-Leets originally belonged unto the King. 4. In this, that Court-Barons are incident unto every Manor, ſo that every Lord of a Manor may keep a Court-Baron; but few have Leets: for inferiour Lords of Manors cannot keep Court-Leets without ſpecial Preſcription, or ſome ſpecial Patent from the King. 5. In this, that in Court-Barons the Suitors are Judges; but in Court-Leets the Steward is Judge. 6. In this, that in Court-Barons the Jury conſiſteth oftentimes of leſs then twelve, in Court-Leets never. The reaſon of that is, becauſe none are impanelled upon the Jury in Court-Barons but Free-holders of the ſame Manor, but in Court-Leets Strangers are oftentimes impanelled. 7. In this, that Court-Barons cannot ſubſiſt without two Suitors *ad minimum*; but Court-Leets can well ſubſiſt without any Suitors. 8. In this, that Court-Barons enquire of no Offences committed againſt the King; but Court-Leets enquire of all Offences, under High Treaſon, committed againſt the Crown and Dignity of the King. In many other reſpects they differ: As that a Writ of Errour lieth upon a Judgment given in a Court-Leet, but not in a Court-Baron. So in a Court-Leet a *Capias* lieth; but in a Court-Baron, in ſtead of a *Capias*, is uſed an Attachment by Goods, So in a Court-Ba-

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ron an Action of Debt lieth for the Lord himſelf, becauſe the Suitors are Judges; but in a Court-Leet the Lord cannot maintain any Action for himſelf, becauſe the Steward is Judge. But omitting theſe with many more, I come to the Etymology of a Manor. Some derive the word Manor *à manendo*; and then it taketh his name either from the Manor-houſe, which the Lord maketh his Dwelling-place; or elſe *à manendo, quia Dominus ac Tenentes in Manerii ſui circuitu cohabitant ac manent.* Some think 'tis termed Manor from manuring the ground: and then it taketh its name either from the Lord's Demeſnes, which the Tenants are bound to manure; or elſe from the Land remaining in the Tenant's hands, which are likewiſe tilled and manured. Others are of opinion that it is derived of the *French* word *meſner*, which ſignifieth to govern or guide, becauſe the Lord of a Manor hath the guiding and directing of all his Tenants within the limits of his Juriſdiction. And this I hold the moſt probable Etymologie, and moſt agreeing with the nature of a Manor: for a Manor in theſe days ſignifieth the Juriſdiction and Royalty incorporate, rather then the Land or Site.

Thus much touching the Etymologie. A word touching the Diviſion of a Manor. A Manor

nor is two-fold, 1. *Re & nomine*; 2. *Nomine tantùm*. *Re & nomine*, as where the two Material Cauſes of a Manor, the Efficient Cauſe, and *Cauſa ſine qua non*, do meet and joyn together. *Nomine tantùm*, as where any of theſe Cauſes is wanting. As to inſiſt in the two Material Cauſes: If the Lord will transfer over to ſome Stranger the Services of all his Tenants, and reſerve unto himſelf the Demeſnes; or if he will paſs away the Demeſnes, and reſerve the Services; in both caſes the Lord peradventure hath a Manor *nomine*, but not otherwiſe, becauſe in the one caſe he wanteth Demeſnes, in the other Services. So if a Manor deſcendeth to Copartners, and they make Partition, and the intire Demeſnes are allotted to the one, and the intire Services to the other; the Manor is now in ſuſpence, for neither of them hath any Manor but in name onely: but if part of the Demeſnes and part of the Services be allotted to each one, then have they each of them a Manor, not *nomine tantùm*, but *re & nomine*. To inſiſt in the Efficient Cauſe: If the King at this day will grant a great quantity of Land to any Subject, injoyning him certain Duties and Services, and withall willeth that this ſhould bear the name of a Manor; howſoever this may chance to gain the

the name of a Manor, yet it will not be a Manor in the estimation of the Law. To insist in this Cause, *sine qua non*: If the King grant away a Manor to *J S*, excepting the Courts and Perquisites, the Grantee hath a Manor in name onely. So if all the Free-holders die but one, if the Lord purchase all the Free-holders Land, or pass away the Services of the Free-holders, or release unto his Free-holders all their Services; notwithstanding the Demesnes and the Services of the Copy-holders, yet the Lord hath but a Manor in name, because the Free-holders are wanting, which are the maintainers and upholders of the Court-Baron, and consequently a necessary help to the perfection of a Manor. So if the Lord granteth away the Inheritance of all his Copy-holders, or demiseth all his Lands granted by Copy to another for 2000 years; the Grantee in the one case, and the Lessee in the other, have a kind of Seigniority in gross, and may keep a Customary Court, where the Steward shall be Judge, and shall take Surrenders, and make Admittances: and this in the eye of the World is a Manor, though in the judgment of the Law it cometh far short of one.

Thus much touching the Division of a Manor. I might here handle many collaterall Juris-di-

riſdictions appropriated to Lords of Manors; as that of erecting Dove-houſes, of proving the Wills of their Tenants deceaſed within their Precincts in many places, of incloſing Common, leaving ſufficient beſides for the other Commoners, with many the like: *Sed hæc lubens libénſque omitto.* And thus cloſing up this part of my Treatiſe touching Manors, I come to the other part, touching Copy-hold.

SECT. XXXII.

I Need not ſtand to diſcourſe at large the antiquity of the *Copy-holders*; for if you caſt your eye back to that is paſt, you ſhall eaſily perceive that Copy-holders, though very meanly deſcended, yet they come of an ancient houſe: and therefore if in this point you deſire ſatisfaction, call to mind what I have already ſpoken, and (if I miſtake not) it will ſufficiently anſwer your deſire. Give me leave to go a ſtep farther, and to examine the ſeveral names which Copy-holders have had from time to time allotted unto them, together with their proper Etymologies. Immediately upon the Conqueſt they were known by the name of Villains or Tenants in Villainage: ſo termed by the *Normans*, either in reſpect of the Imbe-

Imbecillity and Incertainty of their Eſtates; which were grounded upon a very weak foundation, wholly depending upon the will of the Lord, and outtable at his pleaſure; or in reſpect of their Services, which ſavoured of nothing but Slavery, whether they were *certa ac determinata*, or *incerta ac indeterminata, ubi ſciri non poterat veſpere, quale Servitium facere deberent in craſtino*; as *Bracton* ſpeaketh, (contrary to the opinion of ſome, who hold that the Service of Copy-holders was never ſubject to ſuch incertainties;) or laſtly, in reſpect of the perſons, who for the moſt part were Villains, howſoever ſome Freemen did ſometimes hold Land by the ſame Tenure. The leaſt of theſe three reaſons is ſufficient to make them deſerve that name; but joyn them together, and then he that judgeth moſt favourably of them will think this the trueſt title that could be beſtowed upon them. Yet ſome there are who, in behalf of theſe Tenants, ſtick not to maintain (howſoever in reſpect of their Eſtates they may not unfitly be termed Tenants in Villainage, being in ſuch ſtrange ſubjection to their Lords) that neither in reſpect of their Services nor their perſons they could merit that name; eſpecially if we take the word in that reproachfull ſenſe that it is uſually taken in

at this hour. But if we account those Villain-Services which any way touch Husbandry, as Plowing, Sowing, Reaping, and such like; and these men Villains who exercise themselves in any point of Husbandry; then they agree that their Tenure could in no wise have an apter term then this: for they confess that these Copy-holders were for the most part *Rustici & Pagani*, and their Services wholly *ad Rusticitatem tendentia*. Howsoever I dare not wholly disallow of this opinion, yet I cannot altogether approve of it. For I admit, and in a manner consent, that amongst the *Normans* these Services, which we call Rural Services, were called Villain-Services, and those men whom we term Husbandmen were termed Villains, and do hold that the Copy-hold-Services in those days were more slavish then rural, and they themselves rather Bondmen then Husbandmen; otherwise we should make their Tenure differ in nothing from ancient Socage-Tenure, which I assure my self is otherwise: for though Socagers were Rusticks, and in that sense Villains; yet their Tenure was never noted by the name of a Tenure in Villainage, till in many places their Corporal Services begun to be turned into Money: then, for distinction sake, the one began to be called *liberum Socagi-*

um, the other *villanum Socagium*. But long before these Copy-holders were termed Villains, and therefore without all doubt their Tenure was in baseness and slavery a degree above the ancient Socage-Tenure; till at length the Lords of Manors, being framed to more civility, began then to think it a most uncharitable part to keep their poor Tenants in that Bondage: therefore out of the remorse of their own Consciences, and the compassion of their Tenants miseries, by little and little they infranchised them, and released them of their heavier burthens, reserving Services of another nature in lieu of them. Thus having shaken off the fetters of their Bondage, they were presently freed of their opprobrious name, and had other new gentle styles and titles conferred upon them: they were every-where then called *Tenants by Copy of Court-Roll*, or *Tenants at will*, according to the Customs of the Manor: which styles import unto us three things; 1. *Nomen*, 2. *Originem*, 3. *Titulum*. 1. His Name is *Tenant by Copy of Court-Roll*: for he is not called Tenant by Court-Roll, but by Copy of Court-Roll: and this is the sole Tenant in Law who holdeth by Copy of any Record, Charter, Deed, or any other thing. 2. His Commencement is at the will of the Lord. For

these

theſe Tenants in their birth, as well as the Cuſtomary Tenants upon the Bordets of *Scotland*, who have the name of Tenants, were meer Tenants at will; and though they keep the Cuſtomes inviolated, yet the Lord might, ſans controll, eject them. Neither was their Eſtate hereditary in the beginning, as appeareth by *Britton*; for if they died, their Eſtate was preſently determined; as in caſe of a Tenant at will at Common Law: and in ſome points, to this preſent hour, the Law regardeth them no more then a meer Tenant at will; for the Free-hold at the Common Law reſteth not in them, but in their Lords, unleſs it be in Copy-holds of Frank-tenure, which are moſt uſual in Ancient demeſne. Though ſometimes out of Ancient demeſne we ſhall meet with the like ſort of Copy-holds; as in *Northampton-ſhire* there are Tenants which hold by Copy of Court-Roll, and have no other Evidence, and yet hold not at the will of the Lord. Theſe kind of Copy-holders have the Frank-tenure in them, and it is not in their Lords, as in caſe of Copy-holds in baſe Tenure. Beſides, Copy-holders ſhall not attourn upon the granting away of the Manor, no more then Tenants at will at the Common Law; and their Eſtate can be no Infranchiſement to a

Britton, ca. 66.

Villain, no more then a meer Eſtate at will. And farther, their Lands are parcell of the Lord's Demeſnes, as well as Lands granted away at will, according to the courſe of the Common Law: and for his Title and Aſſurance, that is according to the Cuſtome of the Manor. For the Cuſtome of the Manor hath ſo eſtabliſhed and ſo fixed them in their Land, that if they doe their Services and Duties, and perform the Cuſtomes of the Manor, they are as well inheritable, according to the Cuſtome, as he that hath a Frank-Tenement at the Common Law. And ſithence Cuſtome is the life and ſoul of Copy-hold-Eſtates, and whatſoever ſhall or can be ſpoken touching Copy-holds ariſeth from this Head and from this Fountain; give me leave in the ſecond place to ſpeak ſomething concerning them.

SECT. XXXIII.

Cuſtomes are defined to be a Law or Right not written, which being eſtabliſhed by long Uſe and the Conſent of our Anceſtors, hath been and is daily practiſed.

Cuſtome, Preſcription and Uſage, how they differ.

Cuſtome, *Preſcription* and *Uſage*, howſoever there be correſpondency amongſt them, and dependency

dency one on the other, and in common ſpeech one of them is taken for another; yet they are three diſtinct things. Cuſtome and Preſcription differ in this. 1. Cuſtome cannot have any commencement ſince the memory of man, but a Preſcription may, both by the Common Law and the Civil: and therefore where the Statute 1 *Hen.* 8. ſaith, that all Actions popular muſt be brought within three years after the offence committed; whoſoever offendeth againſt this Statute, and doth eſcape uncalled-for three years, he may be juſtly ſaid to preſcribe an Immunity againſt any ſuch Action. 2. A Cuſtome toucheth many men in general; Preſcription this or that man in particular: and that is the reaſon why Preſcription is perſonal, and is always made in the name of ſome perſon certain, and his Anceſtors, or thoſe whoſe Eſtate he hath; but a Cuſtome, having no perſon certain in whoſe name to preſcribe, is therefore called and alledged after this manner, In ſuch a Borough, in ſuch a Manor, there is this or that Cuſtome. And for Uſage, that is the efficient cauſe, or rather the life, of both; for Cuſtome and Preſcription loſe their being, if Uſage fail. Should I goe about to make a Catalogue of ſeveral Cuſtomes, I ſhould, with *Siſyphus*, *ſaxum volvere*, undertake an endleſs piece of work; therefore I will forbear,

since the relation would be an argument of great curiosity, and a task of great difficulty. I will onely set down a brief distinction of Customes, and leave the particulars to your own observation. Customes are either general, or particular. General, which are part of the Common Law, being currant through the whole Commonwealth, and used in every County, every City, every Town, and every Manor. Particular, which are confined to shorter bounds and limits, and have not such choice of fields to walk in as general Customes have. These particular Customes are of two sorts; either disallowing what general Customes do allow, or allowing what general Customes do disallow. As for example sake, By the general Customes of Manors it is in the Copy-holder's power to sell to whom he pleaseth; but by a particular Custome used in some places, the Copy-holder, before he can inforce his Lord to admit any one to his Copy-hold, is to make a profer to the next of the blood, or to the next of his Neighbours *ab oriente Solis*, who, giving as much as the party to whom the Surrender was made, should have it: so on the other side, by the general Custome of Manors, the passing away of Copy-hold-Land by Deed for more then for one year without Licence is not warrant-

ed;

ed; yet some particular Customes in some Manors doe it. So by the general Customes of Manors, Presentments or any other act done in the Leet, after the moneth expired, contrary to the Statute of *Magna Charta* and 31 *E.* 3. are void; yet by some particular Customes such acts are good. And so in millions of the like, as in the sequel of this Discourse shall be made manifest. And therefore, not to insist any longer in dilucidating this point, let us in few words learn the way how to examine the validity of a Custome. For our direction in this business, we shall doe well to observe these six Rules, which will serve us for exact trial. 1. Customes and Prescriptions ought to be reasonable; and therefore a Custome that no Tenant of the Manor shall put in his Cattell to use his Common *in Campis seminatis*, after the Corn severed, untill the Lord have put in his Cattell, is a void Custome, because unreasonable: for peradventure the Lord will never put in his Cattell, and then the Tenants shall lose their profits. So if the Lord will prescribe that he hath such a Custome within his Manor, that if any man's Beasts be taken by him upon his Demesnes Dammage-feasant, that he may detain them untill the Owners of the Beasts give him such recompence for his Harms as he

himself shall request; this is an unreasonable Custome, for no man ought to be his own Judge. 2. Customes and Prescriptions ought to be according to common right: and therefore if the Lord will prescribe to have of every Copy-holder belonging to his Manor for every Court he keepeth a certain summe of money, this is a void Prescription, because it is not according to common Right; for he ought for Justice sake to doe it *gratis*. But if the Lord prescribe to have a certain Fee of his Tenants for keeping an extraordinary Court, which is purchased onely for the benefit of some particular Tenants, to take up their Copy-holds and such like; this is a good Prescription, and according to common Right. 3. They ought to be upon good consideration; and therefore if the Lord will prescribe, that whosoever passeth through the King's High-way which lieth through his Manor should pay him a peny for passing; this Prescription is void, because it is not upon a good consideration. But if he will prescribe to have a peny of every one that passeth over such a Bridge within his Manor, which Bridge the Lord doth use to repair; this is a good Prescription, and upon a good consideration. So if the Lord will prescribe to have a Fine at the Marriage of

his

his Copy-holder, in which Manor the Cuſtome doth admit the Husband to be Tenant by the curteſie, or the Feme Tenant in Dower of a Copy-hold; this Preſcription is good, and upon a good conſideration. But in ſuch Manors where theſe Eſtates are not allowed, the Law is otherwiſe. 4. They ought to be compulſory: and therefore if the Lord will preſcribe that every Copy-holder ought to give him ſo much every moneth to bear his charges in time of War, this Preſcription is void. But to preſcribe they ought to pay ſo much money for that purpoſe, is a good Preſcription. For a Payment is compulſory, but a Gift is arbitrary, at the voluntary liberty of the Giver. 5. They ought to be certain: and therefore if the Lord will preſcribe, that whenſoever any of his Copy-holders die without Heir, that then another of the Copy-holders ſhall hold the ſame Lands for the year following; this Preſcription is void, for the incertainty. But if the Lord will preſcribe to have of his Copy-holders 2 *d.* an Acre Rent, and in time of War fourpence an Acre; this Preſcription is certain enough. 6. They ought to be beneficial to them that alledge the Preſcription; and therefore if the Lord preſcribeth that the Cuſtome hath always been within the Manor, that what Diſtreſſe ſoever is taken within

within his Manor for any common person's cause is to be impounded for a certain time within his Pound; this is no good Prescription, for the Lord is hereby to receive a charge, and no commodity. But if the Prescription goeth farther, that the Lord should have for every Beast so impounded a certain summe of money, this is a good Prescription. If we desire to be more fully satisfied in the general knowledge of Prescriptions and Customes, we shall finde many Maximes which make very materially for this purpose; amongst which I have made choice of these three, as most worthy of your observation. 1. Things gained by matter of Record onely cannot be challenged by Prescription; and therefore no Lord of a Manor can prescribe to have Felons Goods, Fugitives Goods, Deodands, and such like; because they cannot be forfeited untill it appear of Record: but Waives, Estrays, Wrecks, and such like, may be challenged by Prescription, because they are gained by Usage without matter of Record. 2. A Custome never extendeth to a thing newly created; and therefore if a Rent be granted out of Gavel-kind-Land, or Land in Borough-*English*, the Rent shall descend according to the course of the Common Law, not according to the Custome. If before the

Statute

Statute 32 *Hen.* 8. Lands were deviſeable in any Borough or City by ſpecial Cuſtome, a Rent granted out of theſe Lands was not deviſeable by the ſame Cuſtome: for what things ſoever have their beginning ſince the memory of man, Cuſtome maintains not. If there be a Cuſtome within a Manor, that for every Houſe or Cottage two ſhillings Fine ſhall be paid; if any Tenant within theſe Liberties maketh two Houſes of one, or buildeth a new Houſe, he ſhall not pay a Fine for any of theſe new Houſes; for the Cuſtome onely extendeth to the old. So if I have Eſtovers appendant to my Houſe, and I build a new Houſe, I ſhall not have Eſtovers for this new-built Houſe upon this ground. It hath been doubted, if a man by Preſcription hath courſe of water to his Fulling-mills, he converting theſe into Corn-mills, whether by this converſion the Preſcription is not deſtroyed, in regard that theſe Corn-mills are things newly created: but becauſe the quality of the thing, and not the ſubſtance, is altered, therefore this alteration is held inſufficient to overthrow the Preſcription. For if a man by Preſcription hath Eſtovers to his Houſe, although he alter the Rooms and Chambers in the Houſe, as by making a Parlour where there was a Hall, *vel è converſo*, yet the Pre-

Preſcription ſtands ſtill in force: and ſo if by Preſcription I have an ancient Window to my Hall, and I convert this into a Parlour, yet my Neighbours upon this change cannot ſtop my Window, *cauſâ quâ ſuprá*. 3. Cuſtomes are likewiſe taken ſtrictly, though not always literally. There is a Cuſtome in *London*, that Citizens and Free-men may deviſe in Mortmain: A Citizen that is a Foreiner cannot deviſe by this Cuſtome. An Infant by the Cuſtome of Gavel-kind, at the age of fifteen, may make a Feoffment: yet he cannot by the Cuſtome make a Will at that age to paſſe away his Land, to make a Leaſe and a Releaſe, which amounteth to a Feoffment. If there be any Cuſtome that Copy-hold-Lands may be leaſed by the Lord, *vel per Superviſorem, vel Deputatum Superviſoris*, this Cuſtome giveth not power to the Lord to authorize any by his laſt Will and Teſtament to keep a Court in their own name, and to make Leaſes *ſecundùm conſuetudinem Manerii*. But theſe Cuſtomes have this ſtrict conſtruction, becauſe they tend to the derogation of the Common Law; yet they are not to be confined to literal interpretation: for if there be a Cuſtome within any Manor, that Copy-hold-Lands may be granted *in Feodo ſimplici*, by the ſame Cuſtome they

are

are grantable to one and the Heirs of his body, for life, for years, or any other Eſtate whatſoever; becauſe, *Cui licet quod majus, non debet quod minus eſt non licere.* So if there be a Cuſtome that Copy-hold-Lands may be granted for life; by the ſame Cuſtome they may be granted *durante viduitate*, but not *è converſo*; becauſe an Eſtate during Widowhood is leſs then an Eſtate for life. Before the Statute of 32 *Hen.* 8. Lands in certain Boroughs were deviſable by Cuſtome. By the ſame Cuſtome was *implicitè* warranted, authorizing Executors to ſell Lands deviſable. Now with your patience I will onely point at the manner of Pleading of Cuſtomes. I finde a four-fold kind of Preſcribing.

1. To preſcribe in his Predeceſſors, as in himſelf, and all thoſe whoſe Eſtate he hath.

2. To preſcribe generally, not tying his Preſcription to place or perſon: as where a Chief Juſtice preſcribeth, that it hath been uſed that every Chief Juſtice may grant Offices; or where a Sergeant preſcribeth, *Quòd talis habetur conſuetudo*, that Sergeants ought to be impleaded by original Writ, and not by Bill.

3. To preſcribe in a place certain.

4. To preſcribe in the place of another.

The firſt ſort of theſe Preſcriptions a Copy-hold-

py-holder cannot uſe, in regard of the imbecillity of his Eſtate: for no man can preſcribe in that manner but onely Tenants in Fee-ſimple at the Common Law.

The ſecond ſort of theſe may be uſed ſometimes by Copy-holders in the pleading of a general Cuſtome; but in alledging of a particular Cuſtome a Copy-holder is driven to one of the laſt, and, as occaſion ſerveth, he uſeth ſometimes the one, ſometimes the other. If he be to claim Common or other profit in the Soil of the Lord, then he cannot preſcribe in the name of the Lord; for the Lord cannot preſcribe to have Common or other profit in his own Soil: but then the Copy-holder muſt of neceſſity preſcribe in a place certain, and alledge that within ſuch a Manor there is ſuch a Cuſtome, that all the Tenants within that Manor have uſed to have Common in ſuch a place, parcell of the Manor. But if he be to claim Common or other profit in the Soil of a Stranger, then he ought to preſcribe in the name of his Lord, ſaying that the Lord of the Manor, and all his Anceſtors, and all thoſe whoſe Eſtate he hath, were wont to have a Common in ſuch a place for himſelf and his Tenants at will, &c.

SECT.

SECT. XXXIV.

THus much of Cuſtomes: I come now home to Copy-holders. And in the third place I hold it the beſt courſe to dilate upon the manner and means of granting Copy-holds; wherein I will onely rely upon theſe five parts.

1. Upon the perſon of the Grantor.
2. Upon the perſon of the Grantee.
3. Upon the Grant it ſelf.
4. Upon the Thing granted.
5. Upon the Inſtruments through whoſe hands, as through Conduit-pipes, the Lands are *gradatim* conveyed to the Purchaſor.

And firſt of the perſon of the Grantor. Sometimes the Lord himſelf is Grantor, ſometimes a Copy-holder. In voluntary Grants made by the Lord himſelf the Law neither reſpecteth the quality of his Perſon, nor the quantity of his Eſtate: For be he an Infant, and ſo through the tenderneſs of his age inſufficient to diſpoſe of any Land at the Common Law; or *non compos mentis*, an Idiot, or a Lunatick, and ſo for want of common Reaſon unable to traffick in the World; or an Out-law in any perſonal Action, and ſo excluded from the protection of the Law; or an

an Excommunicate, *&c.* and ſo reſtrained *ab omnium fidelium communione*, or at leaſt *à Sacramentorum participatione*: notwithſtanding theſe infirmities and diſabilities, yet he is capable enough to make a voluntary Grant by Copy. For if a Feme Seignioreſſe take Baron, and they two joyn in a voluntary Grant by Copy, this ſhall ever binde the Feme and her Heirs, and yet ſhe is not *ſui juris*, but *ſub poteſtate viri*; becauſe the Cuſtome of the Manor is the chief *baſis* upon which ſtands the whole fabrick of the Copy-hold-Eſtate. And therefore what Cuſtome doth confirm to a Copy-holder, the Law will ever allow, and never ſeek to avoid it in reſpect of any ſuch imperfection in the Grantors perſons; and the quantity of the Lord's Eſtate is no more reſpected then the quality of his perſon: for if his Intereſt be lawfull, be his Eſtate never ſo great or never ſo little, 'tis not material: for be it in Fee, or be it in Tail or Dower, or as Tenant by curteſie, for life or for years, as Guardian, or as Tenant by Statute, or as Tenant by *Elegit*, or at will; the leaſt of theſe Eſtates is a ſufficient warrant to the Lord to grant any Copy-hold eſcheated unto him, for as long time as the Cuſtome doth allow, the ancient Rents and Services being truly reſerved: and theſe Grants ſhall

ever

ever binde them that have the Inheritance of Frank-tenement of the Manor, as well as Offices granted for life by the Chief Juſtice of the Common-Pleas, whoſe Office is but at will, ſhall ever conclude the ſucceeding Juſtice. The reaſon of the Law is this. A Copy-holder upon voluntary Grants made by Copy doth not derive his Eſtate out of the Lord's Eſtate onely, for then the Copy-holder's Eſtate ſhould ceaſe when the Lord's Intereſt determineth; *Nam ceſſante primitivo, ceſſat derivativus:* but the life of the Copy-holder's Eſtate is the Cuſtome of the Manor: and therefore whatſoever befalleth the Lord's Intereſt in his Manor, be it determined by the courſe of time, by death, by forfeiture, or other means; yet if the Lord were *legitimus Dominus pro tempore*, how ſmall ſoever his Eſtate was, that is enough; for the ſame Cuſtome that fixeth a Copy-holder inſtantly in his Land upon his Admittance, will likewiſe preſerve and protect his Intereſt to the end, in ſuch manner, that though the Lord's Intereſt faileth, yet his ſhall never fall to ground, being upheld by ſuch a prop, ſuch a pillar; unleſs perchance the Copy-holder offer violence to his Founder, in breaking the Cuſtome. If the Lord granteth a Copy-hold, and after doth ſever this Copy-hold from the Manor, by granting the In-

heritance to a Stranger, though now one of the chief pillars of a Copy-hold-eſtate is wanting, *viz.* to be parcell of the Manor; yet becauſe the Land at the time of the Copy-holder's Admittance had this neceſſary incident, this Severance, being a matter *ex poſt facto*, cannot amount to the deſtruction of the Copy-hold, eſpecially being the ſole act of the Lord himſelf. If a Manor be granted upon Condition, and before the Condition is broken the Land is granted by Copy, then the Manor becomes forfeited, and the Feoffor entreth; yet the Copy-hold-eſtate remaineth untouched, becauſe lawfully eſtabliſhed by Cuſtome: and yet all mean Eſtates and Charges whatſoever granted by the Feoffee at the Common Law were voidable upon the Entry of the Feoffor; for we have a Ground in Law, that when an Entry is made for breach of a Condition, the party to all intents and purpoſes is in the ſame plight that he was in at the time of the making of the Eſtate. If a man ſeiſed of a Manor in Fee dieth ſeiſed, having iſſue a Daughter, and, his Wife being *privement inſeint* with a Son, the Daughter granteth Lands by Copy; this Grant ſhall ſtand good againſt the Son, for the Daughter was *legitima Domina pro tempore*. So if the Feoffee of a Manor, upon Condition to infeoffe a Stranger the

the next day, maketh a voluntary Grant by Copy; this ſhall binde, and yet his Intereſt was to have but ſmall continuance. If a Manor be granted with a Feme in Frank-marriage, and there is a Divorce had *cauſâ pracontractûs*, ſo that now the Intereſt of the Manor is granted to the Feme onely, and by Relation the Marriage is void *ab initio*: yet becauſe the Baron was *legitimus Dominus pro tempore*, any Copy-holders Eſtates granted before the Divorce remain good. So if a man eſpouſeth a Feme Seignioreſs under the age of Conſent, and after ſhe doth diſagree; though the Marriage by Relation was void *ab initio*, yet Copy-holds granted before diſagreement ſhall never be avoided, *cauſâ quâ ſuprâ*.

If the Lord of a Manor committeth Felony or Murther, and Proceſs of Outlawry be awarded againſt him, after the Exigent he granteth Copy-hold-eſtates, according to the Cuſtome, and then is attainted; theſe Grants are authenticall, though by Relation the Manor was forfeited from the time of the Exigent awarded. So if the Lord had been attainted by Verdict or Confeſſion, any Grant by Copy after the Felony or Murther committed ſhall ſtand good, notwithſtanding the Relation. If the Lord of a Manor acknowledge a Statute, and then granteth Lands by Copy,

and after the Manor is delivered to the Cognisee in Extent; the Grant cannot by this be impeached. And if the Lord of a Manor taketh a Wife, and after maketh Copy-hold-estates, according to the Custome, and dieth; though the Feme hath this Manor assigned unto her for her Dower, yet cannot she avoid these Copy-hold-estates, because the Copy-holders are in by a Title paramount the Title of the Feme, *viz.* by Custome. But, peradventure, if the Heir, after the death of his Ancestor, before the Assignment made unto the Feme for her Dower, had granted Lands by Copy; the Feme might avoid these Grants, because instantly upon the death of the Baron her Title received his perfection, and nothing more was wanting to the confirmation of her Interest. But though the quantity of the Lord's Estate in the Manor be not respected, yet the quantity of his Estate in the Copy-hold is regarded. For if a Copy-holder in Fee surrender to the use of the Lord for life, the Remainder over to a Stranger, or reserveth the Reversion to himself, if the Lord will grant this by Copy in Fee, whatsoever Estate the Lord hath in his Manor, yet having but an Estate for life in the Copy-hold, no larger Estate shall pass then he himself hath; *Quia nemo potest plus juris in alium trans-*

transferre quàm ipſe habet. And farther obſerve, that ſometimes the Law reſpecteth the quantity of the Lord's Eſtate in the Manor: for what Acts ſoever are not confirmed by Cuſtome, but onely ſtrengthned by the power, authority and Intereſt of the Lord, have no longer continuance then the Lord's Eſtate continueth; and therefore it is held, that if a Tenant for life of a Manor granteth a Licence to a Copy-holder to alien, and dieth, the Licence is deſtroyed, and the power of Alienation ceaſeth. As for the quality of the Lord's Eſtate in the Manor, that is much more now reſpected then either the quality of his Eſtate or the quality of his Perſon: for if the Lord, or he (whoſoever he be) that maketh a voluntary Grant by Copy, hath no lawfull Intereſt in the Manor, but onely an uſurped Title, his Grant ſhall never ſo bind the right Owner, but that upon his Entry he may avoid them; otherwiſe we ſhould make Cuſtome an agent in a Wrong, which the Law will never ſuffer. And yet if the Lord of a Manor by his Will in writing deviſeth, that his Executor ſhall grant Copy-hold-eſtates, *ſecundùm conſuetudinem Manerii*, for the payment of his Debts, *&c.* and he make voluntary Grants accordingly; theſe Grants are good, notwithſtanding the Executor hath no

Intereſt in the Manor, nor is *Dom. pro tempore.*

If a Diſſeiſor of a Manor dieth ſeiſed, notwithſtanding his Heir come in by ordinary courſe of Deſcent, yet becauſe the Tort commenced by his Anceſtor is ſtill inherent to his Eſtate, if any Copy-hold-eſtate be granted by the Heir, it may be avoided by the Diſſeiſor immediately upon his Recovery, or upon his Entry: and ſo if the Diſſeiſor infeoffe a Stranger of the Manor, notwithſtanding the Feoffee come in by Title, yet no Grant made by him of Copy-hold-Land ſhall ever binde the Diſſeiſed, no more then a Grant made by the Diſſeiſor himſelf.

If Tenant in Tail of a Manor diſcontinueth and dieth, and after the Diſcontinuance granteth Copy-hold-eſtates; the Heir recovering in a Formedon in the Diſcender may avoid theſe Grants: for though the Diſcontinuee come in under a juſt Title, yet his Intereſt being determined by the death of the Tenant in Tail, the Continuance of the poſſeſſion is a Tort to the Heir, and acts done by Tort-feiſors, tending to the Diſ-inheritance of the right Owners, Cuſtome will never ſo ſtrengthen, but they may be adnihilated. So if a man ſeiſed of a Manor in right of his Wife alieneth this Mano:, and dieth; any Grant made of Copy-hold-eſtates after his death may be avoided

voided by the Feme upon her Entry, or upon her Recovery in a *Cui in vita.*

If a Manor be granted *pur auter vie*, and *Ceſtuy que vie* dieth, and the Grantee continueth ſtill in the Manor, and maketh Grants by Copy, theſe ſhall not binde the Grantor of the Manor; for immediately upon the death of *Ceſtuy que vie* the Grantee was but a Tenant at ſufferance, and had no Manor of lawfull intereſt; for a Writ of Entry *ad terminum qui præteriit* lieth againſt him, as againſt Deforceor.

And ſo if a Tenant for life of a Manor maketh a Leaſe for years of the ſame Manor, and dieth; Copy-hold-eſtates, granted by the Leſſee after the death of the Tenant for life are voidable by the firſt Leſſor.

If a Leſſee for years of a Manor granteth a Copy-hold in Reverſion, and before the Reverſion eſchue the term is expired, the Grant is void. And ſo I take the Law to be, if the Leſſee ſurrendreth his term, and then before his Leaſe ſhould have ended in point of limitation the Reverſion falleth, yet the Grantee ſhall not have it.

If a Leaſe be made for years of a Manor, the Leaſe to be void upon the breach of a certain Condition, if the Condition be broken, and afterwards the Leſſee before the Entry of

the Leſſor granteth Eſtates by Copy, theſe Grants ſhall never exclude the Leſſor; for preſently upon the breach of the Condition the Leaſe is void: but had the Manor been granted for life, in Tail, or in Fee, I think the Law would have fallen out otherwiſe; for before Entry the Frank-tenement had not been avoided, and whereſoever a man may enter and avoid any Eſtate of Frank-tenement upon the breach of a Condition, the Law adjudgeth nothing to be in him before Entry, and he may wave the advantage which he might take by the breach of the Condition, if he will; and therefore notwithſtanding the accruer of the Title of the Grantor, yet before this Title be executed by Entry, the Grantee hath ſuch a lawfull Intereſt, that what Eſtate ſoever he granteth by Copy in the interim ſhall ſtand good againſt the Grantor. And ſo if an Infant infeoffe me of a Manor, though he may enter upon me at his pleaſure; yet Grants made by me by Copy before his Entry ſhall never be defeated by any ſubſequent Entry.

And the ſame Law is of Grants made by a Villain purchaſer of a Manor, before the Entry of the Lord; or of Grants made after an Alienation in Mortmain, before the Lord paramount hath entred for a Forfeiture.

If

If a Parſon after Inſtitution, and before Induction, a Manor being parcell of his Glebe-Lands, grants Lands by Copy, and after is inducted; this admitting of the Copy-holders is no binding act: for though as to the Spiritualties he be a compleat Parſon preſently upon the Inſtitution, yet as to the Temporalties he is not compleat before Induction. So if a Parſon be admitted, inſtituted and inducted, but doth not ſubſcribe to the Articles, according to the Statute of 13 *Eliz.* and granteth Lands by Copy, as before; this Grant ſhall not conclude the ſucceeding Incumbent, becauſe his Admiſſion, Inſtitution and Induction were wholly void in themſelves: but had the Parſon been deprived for crime of Hereſie, or for being meer *Laicus*, although he be declared by Sentence to be uncapable of a Benefice, and ſo his Preſentment void (*ab initio*;) yet becauſe the Church was once full, untill the Sentence declaratory came, although the Deprivation ſhall relate to ſome purpoſes, yet becauſe the Preſentment is not in it ſelf void, ſurely a Relation ſhall never be ſo much favoured as to avoid a Copy-hold-eſtate in this kind.

So much of Grants made by the Lords themſelves. In Grants made by Copy-holders, as the Law reſpecteth the quality of the

Copy-

Copy-holders Eſtate; ſo doth it reſpect both the quality of his Perſon, and quantity of his Eſtate.

The quality of his Perſon: for whoſoever is uncapable of diſpoſing of Land at the Common Law, cannot without ſpecial Cuſtome paſs away any Copy-hold. The quantity of his Eſtate: for no Copy-holder can poſſibly paſs away more then is in him; and therefore if there be Joynt-tenants of a Copy-hold, one cannot aliene the whole. But if there be two Joynt-tenants of a Manor, and a Copy-holder eſcheateth, one of them may grant this Copy-hold, and his Companion ſhall never avoid any part of it.

If a Copy-holder for life, the Remainder over in Fee to a Stranger, ſurrendreth in Fee, and the Lord admits accordingly; yet an Eſtate for life onely paſſeth.

So if the Lord of a Manor granteth a Copy-hold for life, where an Eſtate in Fee is warrantable, and the ſame Grantee ſurrenders in Fee to the uſe of a Stranger, and the Lord admits him, *ſecundùm officium ſurſumredditionis*; I think no Fee paſſeth: for though the Lord's Admittance may *primâ facie* ſeem to amount to a Confirmation of the Eſtate ſurrendred; the Reverſion reſteth in him to diſpoſe of according to the Cuſtome. As where a Leſſee

ſee for years at the Common Law maketh a Feoffment in Fee, and maketh a Letter of Attorney to his Leſſor, to deliver Livery and ſeiſin, who executeth it accordingly; though the Leſſor be uſed as an inſtrument to perform the will of the Leſſee, yet this being his voluntary act, the Law taketh it as a Conſent for the paſſing away of the whole Inheritance. But if you look narrowly into both Caſes, you ſhall finde the difference: in the latter Caſe, by the Feoffment the Fee is deveſted out of the Leſſor, and therefore a Conſent will ſerve to transfer the Reverſion; but in the former Caſe, the Reverſion is not pluckt out of the Lord by the Surrender, and therefore an implied Conſent is too weak to remove it. I will onely adde one obſervation more, and ſo I will end with the Grantor.

The Law is not ſo ſtrict to a Copy-holder, as that he muſt come perſonally into Court upon the making of every Surrender, but he may ſurrender by Attorney, as well as Livery and ſeiſin may be made by Attorney at the Common Law: and ſhould the Law be otherwiſe, great inconvenience would enſue; for how ſhould Copy-holders that are in priſon, or languiſhing upon bed, or beyond the Seas, ſurrender but by Attorney?

But

But note this difference. If a man hath a bare Authority joyned with a Confidence without Intereſt, this Authority cannot be executed by Attorney: and therefore if I deviſe that my Executors ſhall ſell my Land, they cannot ſell by Attorney, for that were to make an Attorney upon Attorney, which the Law will in no wiſe permit. And though a man have an Authority joyned with an Intereſt, yet if the Authority be warranted by ſpecial Cuſtome onely, it cannot be executed by an Attorney: and therefore if there be a ſpecial Cuſtome, that a Copy-holder for life may make Eſtate for 20 years to continue after his death, theſe Eſtates cannot be made by Attorney. So if there be a ſpecial Cuſtome, that an Infant at the age of diſcretion may ſurrender a Copy-hold; this Surrender, being confirmed by ſpecial Cuſtome onely, cannot be made by Attorney. And ſo if there be a Cuſtome, that a Copy-holder out of the Court may ſurrender into the hands of the Lord by the hands of two Cuſtomary Tenants; ſuch Surrenders muſt be done in perſon.

But whereſoever there is a general Authority accompanied with an Intereſt, that Authority may be executed by Attorney: as *Ceſtuy que uſe*, after the Statute of 1 *R.* 3. and before the Statute of 27 *H.* 8. might have aliened

aliened by Attorney; for at that time he had an abſolute Authority to diſpoſe of the Land at his pleaſure, without any Confidence repoſed in him.

And thus much of the Grantor: a word of the Grantee.

SECT. XXXV.

THE ſame perſons that are capable of a Grant by the Common Law are capable of a Grant by Copy, according to the Cuſtome of the Manor.

An Infant, a man *Non ſanæ memoriæ*, an Idiot, a Lunatick, an Out-law, or an Excommunicate, may be Grantees of a Copy-hold-eſtate.

The Lord himſelf may take a Copy-hold to his own uſe. One Joynt-tenant may receive a Copy-hold from the hands of his Joynt-companion, becauſe it paſſeth by Surrender, not by Livery.

A Feme-covert may be a Purchaſer of Copy-hold, and this Purchace ſhall ſtand in force untill her Husband diſagreeth. Nay, farther, a Feme-covert may receive a Copy-hold-eſtate by Surrender from her Husband, becauſe ſhe cometh not in immediately by him, but by mediate means, *viz.* by the Admittance of the Lord according to the Surrender.

As

As the Feme is capable of receiving a Copy-hold from the hands of the Baron; ſo, by ſpecial Cuſtome, the Baron may take a Copy-hold from the hands of his Feme; for in ſome Manors Cuſtome doth enable the Feme to deviſe a Copy-hold to the Baron. But this Cuſtome hath been much impugned, therefore I dare not juſtifie the validity of it.

What perſons ſoever are capable of a Grant by Copy may well take by Attorney: not that the Lord ſhall be enforced to admit any one by Attorney, becauſe upon every Admittance there is Fealty due by the party admitted, which is a Duty ſo inſeparably annexed to the perſons, that it cannot be diſcharged by Deputy, and therefore no reaſon the Lord ſhould be inforced to admit by Attorney; but if he will admit him, it ſtandeth good.

It is not neceſſary that, upon Surrenders of Copy-holds, the name of the party to whoſe uſe the Surrender is made be preciſely ſet down; but if by any manner of circumſtance the Grantee may be certainly known, it is ſufficient. And therefore a Surrender made to the Lord Arch-biſhop of *Canterbury*, or the Lord Mayor of *London*, or the High-Sheriff of *Norfolk*, without mentioning either

ther their Chriſtian-name or Sur-name, are good enough, and certain enough, becauſe they are certainly known by this name, without farther addition. So if I ſurrender to the uſe of the next of my bloud, to the uſe of my Wife, to the uſe of my Brother or Siſter, having but one Brother or one Siſter; theſe Surrenders are good without any additions, becauſe the Grantee may certainly be known by theſe words.

If I ſurrender generally into the hands of the Lord, not expreſſing to whoſe uſe the Surrender ſhall be; this Surrender is a good Surrender, and ſhall enure to the benefit of the Lord.

If I ſurrender to the uſe of my Son *W*, having more Sons then one of that name; yet by an Averment this incertainty may be helped.

But if I ſurrender to the uſe of my Coſin, or my Friend; this is ſo general and ſo incertain, that no ſubſequent manifeſtation of my intention can any way ſtrengthen it.

So if three ſurrender to the uſe of three or four of S. *Dunſtan*'s Pariſh, not naming the Pariſhioners by their names; this Surrender is utterly void.

And ſo if I ſurrender in the disjunction to the uſe of *J L.* or *J N*; this is inſufficient for the incertainty.

And

And in cuſtomary Grants upon Surrenders the Law is not ſo ſtrict as in Grants at the Common Law. For in Grants at the Common Law, if the Grantee be not *in rerum natura*, and able to take by virtue of the Grant preſently upon the Grant made, it is meerly void: But in cuſtomary Grants upon Surrenders the Law is otherwiſe: for though at the time of the Surrender the Grantee is not *in eſſe*, or not capable of a Surrender; yet if he be *in eſſe* and capable at the time of the Admittance, that is ſufficient: and therefore if I ſurrender to the uſe of him that ſhall be Heir to *J S*, or to the uſe of *J S* next child, or to the uſe of *J S* next Wife; though at the time of the Surrender *J S* had no Heir, Child, or Wife, yet if afterwards he hath a Child, or taketh a Wife, his Heir, his Child or his Wife may come into the Court, and compell the Lord to admit according to the Surrender. So if I ſurrender to the uſe of him that ſhall come next into *Pauls* after ſuch an hour; whoſe fortune ſoever it is to come firſt, the Lord muſt admit him, and I ſhall never avoid it. The ſame Law is, if I ſurrender to the uſe of him that *J S* ſhall nominate, or that I my ſelf ſhall nominate to the Lord at the next meeting.

The reaſon of the Law is this; A Surrender

render is a thing executory, which is executed by the ſubſequent Admittance, and nothing at all is inveſted in the Grantee before the Lord hath admitted him according to the Surrender; and therefore if at the time of the Admittance the Grantee be in *rerum natura*, and able to take, that will ſerve.

Beſides, in Cuſtomary Grants the intent of the Grantor is more reſpected then it ſhould be by the ſtrict rules of the Law: which appeareth by this, that if a Surrender be made of a Copy-hold to the Uſe of a laſt Will, and the Surrender deviſeth it unto two, the one is admitted according to the purport of the Will, this ſhall inure to both. But though the Surrender be a thing executory and the intent of the Grantor ſo much favoured; yet if a Copy-holder will ſurrender to the Uſe of the right Heirs of *J S*, he being alive, this is void, becauſe it cannot take effect according to the intent of the Grantor; for he would have the Grant to be executed preſently, which cannot be, in regard that *J S* can have no Heir till after his death. So much of the Grantee; and I come now to the Grant it ſelf.

SECT. XXXVI.

A Copy-hold Intereſt cannot be transferred by any other Aſſurance then by Copy of Court-Roll, according to the Cuſtome.

If I will exchange a Copy-hold with another, I cannot doe it by an ordinary Exchange at the Common Law, but we muſt ſurrender to each other's Uſe, and the Lord admit us accordingly.

If I will deviſe a Copy-hold, I cannot doe it by will at the Common Law, but I muſt ſurrender to the Uſe of my laſt Will and Teſtament, and in my Will I muſt declare my intent.

If I am ouſted by a Copy-holder, a Releaſe made to him is void, becauſe it would be a prejudice to the Lord; and beſides, there is no Cuſtomary Right upon which the Releaſe may inure: but a Releaſe inuring by the way of extinguiſhing, where no prejudice accrueth to the Lord, will ſerve to drown a Co-

Co. 4. *fol.* 25. py-hold right; and therefore if I ſurrender out of Court upon Condition to the Uſe of *J S*, and the Preſentment is made abſolute in Court, and the Admittance framed accordingly, this Admittance

and

and Preſentment differing from the effect of the Surrender are both void. Yet becauſe upon the Admittance the Lord is ſatisfied of his Fine, and ſo nothing at all prejudiced, and beſides here is a Cuſtomary Right upon which the Releaſe may be grounded; I may by a Releaſe at the Common Law ſufficiently confirm this void Eſtate. And ſo upon the ſame reaſon, if I am ouſted of a Copy-hold, and the Lord admit him according to the Cuſtome, a Releaſe made by me at the Common Law will extinguiſh my Right: but if I make a Leaſe for years of a Copy-hold, I cannot by my Releaſe paſs my Reverſion, becauſe this Releaſe inureth by way of Inlargement to transfer an Intereſt, and not by way of Extinguiſhment to drown a Right; but my way is to ſurrender my Reverſion into the hands of the Lord, and he to grant it over to the Leſſee.

SECT. XXXVII.

IF Copy-hold-Land come into that plight that it cannot paſs by Copy, it is become not alienable: and therefore if the Lord of a Manor will grant to me a Copy-hold in Fee, and after will grant the Inheritance of this Copy-hold to a Stranger, in regard that now

my Copy-hold is become no parcell of the Manor, and ſo I cannot ſurrender into the hands of the Lord and the Grantee of the Inheritance, though I am to him a Tenant, and am tied to doe unto him all manner of Services which are due without keeping of Court, as to pay Rent, to diſcharge Herriots, and all other Duties of the ſame nature; yet becauſe the Grantee cannot keep a Court, and ſo is incapable of taking a Surrender, or making an Admittance, therefore I cannot by any means alien; for no Conveyance at the Common Law will ſerve, becauſe it remaineth ſtill Copy-hold notwithſtanding, and what Cuſtomes ſoever were incident to the Land before Severance, do remain ſtill undeſtroyed: as if the Land were Burrow-Engliſh or Gavel-kind before, it ſo continueth; and a Decree in Chancery will ſerve no more then an ordinary Aſſurance at the Common Law; for that bindeth my perſon onely, not my Intereſt. Sithence therefore Copy-hold-eſtates cannot be conveyed away otherwiſe then by Copy of Court-Roll, according to the Cuſtome, let us examine the nature of theſe Cuſtomary Grants, wherein three branches are to be conſidered.

Co.4.fo.24.

1. The

1. The *Surrender.*
2. *Preſentment.*
3. *Admittance.*

In ſome Grants a Surrender is ſufficient, without Preſentment or Admittance.

In ſome an Admittance, without a Surrender or Preſentment.

In ſome a Surrender and Admittance are both neceſſary; and in ſome a Surrender, Preſentment and Admittance are all requiſite.

SECT. XXXVIII.

IF a Copy-holder will ſurrender to the Uſe of the Lord, the Intereſt of the Copy-hold is ſufficiently veſted in the Lord immediately upon the Surrender, without any Admittance of the Lord, becauſe the Lord cannot admit himſelf.

If the Lord will make a voluntary Grant of a Copy-hold, no Surrender is requiſite; for by the Admittance of the Lord according to the Cuſtome the Copy-holder is ſufficiently ſettled in his Land, without any other Ceremony.

If a Copy-holder will ſurrender in Court to the Uſe of a Stranger, beſides the Surrender the Admittance is requiſite: and if the Sur-

render be made out of Court into the hands of the Lord himſelf, which the general Cuſtome will warrant, or into the hands of the Bailiff or of two Tenants of the Manor, which by ſpecial Cuſtome onely is warrantable; beſides a Surrender, two other Ceremonies are requiſite, the one a true Preſentment of the Surrender in Court by the ſame perſons into whoſe hands the Surrender was made, the other is an Admittance of the Lord according to the effect and tenor both of the Surrender and Preſentment.

But now more particularly of every one of them apart, and firſt of a Surrender.

SECT. XXXIX.

THis word *Surrender* is *vocabulum artis*; and therefore where a Surrender is needfull, if this one word be wanting, all other words uſed in ordinary Conveyances are uneffectual and inſufficient to convey any Copy-hold-eſtate; for if a Copy-holder come into Court, and offer to paſs his Copy-hold by word of Grant, of Gift, of Bargain or Sale, or ſuch like, I doubt he will fail of his purpoſe; for as he is tied to a ſingular form of Aſſurance, ſo is he reſtrained to peculiar words in his Aſſurance.

Sur-

Surrenders are made in ſeveral ſorts, according to the ſeveral Cuſtomes of Manors.

In ſome Manors, where a Copy-holder ſurrendreth his Copy-hold, he uſeth to hold a little Rod in his hand, which he delivereth to the Steward or Bailiff, according to the Cuſtome of the Manor, to deliver it over to the party to whoſe uſe the Surrender was made in the name of Seiſin; and from thence they are called *Tenants by the Verge.*

In ſome Manors, in ſtead of a Wand a Straw is uſed; and in other Manors a Glove is uſed. *Et conſuetudo loci ſemper eſt obſervanda.*

A Surrender (where by a ſubſequent Admittance the Grant is to receive his perfection and confirmation) is rather a manifeſting of the Grantor's intention, then of paſſing away any Intereſt in the poſſeſſion; for till Admittance the Lord taketh notice of the Grantor as Tenant, and he ſhall receive the Profits of the Land to his own uſe, and ſhall diſcharge all Services due to the Lord: but yet the Intereſt is in him but *ſecundùm quid*, and not abſolutely; for he cannot paſs away the Land to any other, or make it ſubject to any other Incumbrance then it was ſubject to at the time of the Surrender: neither in the Grantee is any manner of Intereſt inveſted be-

fore Admittance; for if he enter he is a Treſpaſſer, and puniſhable in Treſpaſs; and if he ſurrender to the Uſe of another, this Surrender is meerly void, and by no matter *ex poſt facto* can be confirmed. For though the firſt Surrender be executed before the ſecond, ſo that at the time of the Admittance of him to whoſe Uſe the ſecond Surrender was made his Surrenderer hath a ſufficient Intereſt as abſolute Owner; yet becauſe at the time of the Surrender he had but a Poſſibility of an Intereſt, therefore the ſubſequent Admittance cannot make this act good which was void *ab initio*. But though the Grantee hath but a Poſſibility upon the Surrender, yet this is ſuch a Poſſibility as is accompanied with a Certainty; for the Grantee cannot poſſibly be deluded or defrauded of the effect of his Surrender, and the fruits of his Grant: for if the Lord refuſe to admit him, he is compellable to doe it by a *Subpœna* in the Chancery; and the Grantor's hands are ever bound from the diſpoſing of the Land any other way, and his mouth ever ſtopped from revoking or countermanding his Surrender. But, peradventure, if a Copy-holder languiſhing in extremity ſurrendreth out of Court to the uſe of his Coſin, in conſideration of Conſanguinity, or to the uſe of his Son, in conſideration of natural Love and Affection,

and

and after recovereth his health before Preſentment; this Surrender is revocable or countermandable: but if it be granted upon valuable conſideration, as for the diſcharge of Debts, or for a ſumme of money paid, though it be made out of Court, yet it is as binding as any Surrender whatſoever made in Court.

And thus much for a Surrender: a word of a Preſentment.

SECT. XL.

THE *Preſentment*, by the general Cuſtomes of Manors, is to be made at the next Court-day immediately after the Surrender; but by ſpecial Cuſtome in ſome places it will ſerve at the ſecond or third Court. And it is to be made by the ſame perſons that took the Surrender, and in all points material according to the true tenour of the Surrender. And therefore if the Surrender be conditional, and the Preſentment be abſolute, both the Surrender, Preſentment and Admittance thereupon are wholly void.

But if the Conditional Surrender be preſented, and the Steward in entring of it omitteth the Condition; yet upon ſufficient proof made in Court, the Surrender ſhall not be avoided, but the Roll amended: and this

ſhall

ſhall be no concluſion to the party, to plead or give in evidence the truth of the matter.

If I ſurrender out of Court, and die before Preſentment, if Preſentment be made after my death, according to the Cuſtome this is ſufficient. So if he to whoſe Uſe the Surrender is made dieth before Preſentment; yet upon Preſentment made after his death, according to the Cuſtome his Heir ſhall be admitted. And ſo if I ſurrender out of Court to the uſe of one for life, the Rendror and the Leſſee for life dieth before Preſentment; yet upon Preſentment made, he in the Remainder ſhall be admitted. And ſo if I ſurrender to two joyntly, and one dieth before Preſentment, the other ſhall be admitted to the whole. The ſame Law is, if thoſe into whoſe hands the Surrender is made die before Preſentment, upon ſufficient proof in Court that ſuch a Surrender was made, the Lord ſhall be compelled to admit accordingly: and if the Steward, the Bailiff, or the Tenants into whoſe hands the Surrender is made, refuſe to preſent, upon a Petition or a Bill exhibited in the Lord's Court the party grieved ſhall find remedy. But if the Lord will not doe him right, he may both ſue the Lord and them that took the Surrender in the Chancery, and ſhall there find relief.

Co. 4. fo. 29. b.

This

Thus much of Preſentments: a word of Admittances.

SECT. XLI.

Admittances are threefold.

1. An Admittance upon a voluntary Grant.

2. An Admittance upon Surrender.

3. An Admittance upon a Deſcent.

In voluntary Admittances the Lord is an inſtrument: for though it is in his power to keep the Land in his own hands, or to diſpoſe of it at his pleaſure, and to that intent he may be reputed as abſolute Owner; yet becauſe in diſpoſing of it he is bound to obſerve the Cuſtome preciſely in every point, and can neither in Eſtate nor Tenure bring in any alteration, in this reſpect the Law accounts him Cuſtome's inſtrument. If the Cuſtome doth warrant an Eſtate onely *durante Viduitate*, and the Lord admits for life; this ſhall not bind his Heir or Succeſſor, becauſe Cuſtome hath not ſufficiently confirm'd it. So if the Lord fail in reſerving *verum & antiquum Redditum*, as if he reſerveth ten ſhillings, where the uſual Rent cuſtomably reſerved is twenty ſhillings; this may be a means to avoid the Admittance. And the Law is very ſtrict in this

this point of Reſervation: for though the ancient accuſtomable Rent be reſerved according to the quantity, yet if the quality of the Rent be altered, the Heir may avoid this Grant. For if the ancient Rent from time to time hath been twenty ſhillings in Gold, and the Lord reſerveth it in Silver, this variance of the quality of the Rent is in force to deſtroy the Grant: ſo, if the ancient Rent hath been accuſtomably paid at four Feaſts in the year, and the Lord reſerveth it at two Feaſts. So, if two Copy-holds eſcheat to the Lord, the one of which hath been uſually demiſed for twenty ſhillings Rent, the other for ten ſhillings Rent, and he granteth them both by one Copy for one Rent of thirty ſhillings; this is not good: and ſo if a Copy-hold of three Acres eſcheats, which hath ever been granted for three ſhillings Rent, and the Lord granteth one Acre, and reſerveth *pro rata* one ſhilling Rent, *verus & antiquus Redditus* is not reſerved. But if a Copy-hold of ſix Acres, which hath ever been demiſed for ſix ſhillings Rent, eſcheateth to two Copartners, and one granteth three Acres, reſerving three ſhillings *pro rata*; this is a perfect Reſerving.

In Admittances upon Surrender, the Lord to no intent is reputed as Owner, but wholly as an Inſtrument; and the party admitted ſhall be

be ſubject to no other charges or incumbrances of the Lord, for he claims his Eſtate under the party that made the Surrender : and in the Plaint in the nature of a Writ of Entry in the *per* it ſhall be ſuppoſed in the *per* by him, not by the Lord.

And as in Admittances upon Surrenders, ſo in Admittances upon Deſcents, the Lord is uſed as a meer Inſtrument, and no manner of Intereſt paſſeth out of him; and therefore neither in the one nor in the other is any reſpect had unto the quality of his Eſtate in the Manor; for whether he hath it by right or by wrong it is not material, theſe Admittances ſhall never be called in queſtion for the Lord's Title, becauſe they are judicial acts, which every Lord is enjoyned to execute. Co. 4. *fo.* 27. *b.* Co. 1. *fo.* 140. *b.*

Beſides, in Admittances upon Surrenders the Lord being accounted nothing but a neceſſary Inſtrument, it followeth that he hath a bare cuſtomary power to admit *ſecundùm formam & effectum ſurſumreddendi* : therefore if there be any variance between the Admittance and the Surrender either in the Perſon, in the Eſtate, or in the Tenure, or in any other collateral points, the Lord doth onely transfer an Eſtate according to the Surrender and his authority, if it can take ſuch effect. As if I ſurrender

der to the Uſe of *J S*, and the Lord admits *J N*, this Admittance is wholly void; and, notwithſtanding this Admittance, the Lord may afterwards admit *J S* according to the effect of his Authority: but had he admitted *J S* and *J N* joyntly, then the Admittance had been void for the one, and good for the other, like the Caſe of a Deviſe; where a Deviſe of a term is made to *J S*, and the Exe-

Co. 4. fo. 28. cutors agree that *J S* and *J N* ſhall have this term, this conſent is void to *J N*; for after the conſent of the Executors, *J S* is in by the Deviſe. Yet ſome are of opinion, that if I ſurrender to the Uſe of *J S* in Fee, and the Lord admits *J S* together with his eldeſt Son and Heir apparent, that this is an Eſtate by Eſtoppel to *J S*, and that he ſhall onely claim joyntly with his Son, becauſe he might have refuſed an Admittance in this manner: but I can hardly be brought to think that this Admittance, giving a preſent Intereſt in the Son, who by Surrender was to have no Intereſt till the death of his Father, ſhould be any ſuch Eſtoppel.

If I ſurrender to the uſe of *J S* for life,

Co. 4 fo. 29. and the Lord admits him in Fee, an Eſtate for life onely paſſeth. So if I ſurrender without mentioning any certain Eſtate,

Eſtate, becauſe by implication of the Law Eſtate for life onely paſſeth, though the Lord admit in Fee, no more doth paſs then the implication of Law will warrant. If I ſurrender with the Reſervation of a Rent, and the Lord admits, not reſerving any Rent, or reſerving a leſs Rent then I reſerved upon the Surrender, this Admittance is wholly void: but if the Lord reſerveth a greater Rent, then is the Reſervation void onely for the Surpluſage, and the Admittance ſo far currant as it agreeth with my Surrender. If I ſurrender upon Condition, and the Lord omits the Condition, the Admittance is wholly void: but if my Surrender be abſolute, and the Lord's Admittance be conditional, the Condition is void, but the Admittance in all points elſe is good. Co. 4. fo. 25.

The reaſons of theſe diverſities are theſe. Where an authority is given to any one to execute any act, and he executeth it contrary to the effect of his authority, this is utterly void: but if he executeth his authority, and withall goeth beyond the limits of his Warrant, this is void for that part onely wherein he exceedeth his authority.

Theſe Admittances upon Surrender differ from Admittances upon Deſcents in this, that in Admittances upon Surrender nothing is veſted

ed in the Grantee before Admittance, no more then in the voluntary Admittances; but in Admittances upon Deſcents the Heir is Tenant by Copy immediately upon the death of his Anceſtor, not to all intents and purpoſes; for peradventure he cannot be ſworn of the Homage before, neither can he maintain a Plaint in the nature of an Aſſiſe in the Lord's Court before, becauſe till then he is not compleat Tenant to the Lord, no farther forth then the Lord pleaſeth to allow him for his Tenant. And therefore if there be Grandfather, Father and Son, and the Grandfather is admitted, and dieth, and the Father entreth, and dieth before Admittance, the Son ſhall have a Plaint in the nature of a Writ of Ayel, and not an Aſſiſe of Mortdaunceſtor. So that to all intents and purpoſes the Heir, till Admittance, is not compleat Tenant; yet to moſt intents, eſpecially as to Strangers, the Law taketh notice of him as of a perfect Tenant of the Land inſtantly upon the death of his Anceſtor; for he may enter into the Land before Admittance, take the Profits, puniſh any Treſpaſs done upon the ground, ſurrender into the hands of the Lord to whoſe Uſe he pleaſeth, ſatisfying the Lord his Fine due upon the Deſcent, and by Eſtoppel he may prejudice himſelf of his Inheri-

Co. 4. fo. 23.

heritance: for if an Eſtrange come and ſurrender to the Uſe of him and his Wife before Admittance, he ſhall ever claim joyntly with his Wife, and never be taken as ſole Tenant. And the Lord may avow upon him before Admittance for any arrerages of Rent or other Services. And laſt of all, upon an actual Poſſeſſion, there ſhall be *poſſeſſio Fratris* before Admittance: for if a Copy-holder in Fee have iſſue a Son and a Daughter by one Venter, and a Son by another Venter, and dieth ſeiſed, and his Son by the firſt Venter entereth into the Land, and dieth before Admittance, the Daughter ſhall inherit as Heir to her Brother; and not the Son by the ſecond Venter as Heir to his Father. And many times the poſſeſſion of a Guardian or a Termer, without an actual Entry, or any Claim made by the Heir, will make a *poſſeſſio Fratris*: as if a Copy-holder in Fee, having iſſue a Son or a Daughter by one Venter, and a Son by another Venter, by licence of the Lord maketh a Leaſe for years, and dieth, and the Son of the firſt Venter dieth before the expiration of the Term, being neither admitted, nor having made any actual Entry, or any Claim; yet this poſſeſſion of the Leſſee is ſufficient, and the Reverſion ſhall deſcend to the Daughter of the firſt Venter, and not to Co. 4. fo. 22. b.

the Son of the second Venter. But if the Leaſe had been determined living the Son by the firſt Venter, and afterwards he had died before any actual Entry made, the Law would have fallen out otherwiſe, becauſe there was a time when he might have lawfully entred. Therefore where ſome have imagined that nothing ſhould be inveſted in the Heir before Admittance, becauſe every Admittance of an Heir upon a Deſcent amounteth to a Grant, and ſo may be pleaded; they are in an errour: for though it be true, that after Admittance the Heir may in pleading alledge this as a Grant, and that hath been allowed, to avoid the inconveniencies that otherwiſe ſhould enſue; for if the Copy-holder ſhould be driven in pleading to ſhew the firſt Grant, either that was made before the memory of man, and ſo is not pleadable, or ſince the memory of man, and then Cuſtome fails; for this reaſon the Law hath allowed a Copy-holder in pleading to alledge any Admittance, as well upon a Deſcent as upon a Surrender, as a Grant: and yet he may, if he will, alledge the Admittance of his Anceſtors as a Grant, and ſhew the Deſcent to him, and that he entred, and well, without any Admittance. But the Heir cannot plead that his Anceſtor was ſeiſed in Fee at the will of the Lord, by Copy of Court-Roll,

Co. 4 fo. 22. b.

of

of such a Manor, according to the Custome of the Manor, and that he died seised, and that the Copy-hold descended upon him; because in truth such an Interest is but a particular Interest at will, in judgment of law, although it be descendable by Custome.

So that I conclude, that an Admittance is principally for the benefit of the Lord, to intitle him to his Fine, and not much necessary for strengthning of the Heir's Title.

Then will some say, if the benefit which the Heir shall receive by the Admittance will not countervail the charges of the Fine, he will never come in, and take up his Copy-hold in Court, and so defeat the Lord of his Fine. I assure my self, if it were in the election of the Heir to be admitted or not to be admitted, he would be best contented without Admittance; but the Custome in every Manor is compulsory in this point: for either upon pain of Forfeiture of their Copy-hold, or of incurring some great penalty, the Heirs of Copy-holders are inforced in every Manor to come into Court, and be admitted according to the Custome, within a short time after notice given of their Ancestor's decease.

And thus much of the Grant it self: a word of the things Granted.

SECT. XLII.

THings that lie not in Tenure are not grantable by Copy; as Rents, Bailiwicks, Stewardships, Common in gross, Advowsons in gross, and such like; all which are incorporate Hereditaments, and therefore no Rent can issue out of them, neither can they be held by any manner of Service. But an Advowson appendant, a Common appendant or a Fair appendant may pass by Copy, by reason of the principal thing to which they are appendant: and generally what things soever are parcell of the Manor, and are of perpetuity, may be granted by Copy, according to the Custome; as Under-woods growing upon the Manor, being things of continuance, (for after they are cut they will grow again *ex stipitibus*) may well be granted by Copy; and so of Herbage or any other profit of the Manor. And sometime of the grant of a Copy-hold things shall pass that are severed from the Manor: as if the Lord of a Manor grant his Manor for years, *except. Boscis & Subboscis* growing in certain Copy-hold-ground, and the Lessee by his Steward granteth a Copy-hold, within which Manor there is a Custome that every Copy-holder

Co. 4. fo. 31.

holder may take within his Copy-hold Woods and Under-woods growing upon the ground for his neceſſary fuel; notwithſtanding this exception in the Leaſe of the Manor, the Copy-holder may cut down Woods or Under-woods according to the Cuſtome, though by exception ſevered from the Manor: for though the Leſſee of the Manor, in reſpect of the exception, could not meddle with the Woods or Under-woods, and ſo it might ſeem *primâ facie* very probable that the Copy-holder, coming in by the voluntary Admittance of the Leſſee, ſhould have no more authority nor intereſt then the Leſſee himſelf had; yet becauſe the Copy-holder was once in by Cuſtome, and ſo his Title being grounded upon Cuſtome is paramount the exception, therefore the exception in the Leaſe of the Manor, though preceding the Grant of the Copy-hold, cannot any way touch or prejudice the Copy-holder. And ſo, if there be a Cuſtome within a Manor, that Copy-holders have uſed to have Common in the Waſtes of the Lord, and the Lord granteth away his Waſtes, and after granteth a Copy-hold; the Copy-holder ſhall have Common: but in alledging the Cuſtome he ſhall not ſay, *Quòd infra Manerium prædict. talis habetur conſuetudo*, but that till ſuch a time, *viz.* before the Severance, *talis habebatur, & toto tempore, &c. conſuetudo*,

and then shew the Severance. If there be an incertainty in the things granted, the Grant is not therefore insufficient; for by the election of him that is the first Agent it may be made certain.

As if I grant by Copy twenty loads of Hasell or twenty loads of Maple, in the disjunctive, to be cut down and taken by the Grantee in my Manor of *Dale*, there the Grantee hath election to make choice of which he pleaseth, because he is to perform the first act of cutting down and taking them: but if I am to cut them down, and deliver them to the Grantee, then have I the election. And observe this difference touching this point of Election.

Co. 4. fo. 31. b. Co. 2. fo. 37. a.

If a Grant be made in the disjunctive of two annual things and things of continuance; if the election belong to the Grantor, and he faileth at the day to make election, yet his election is not determined, but continueth the same after the day that it was before the day: but otherwise it is where things are not annual, but are to be performed *unica vice tantùm*.

Therefore if the Lord of a Manor granteth by Copy twenty Trees growing upon *Blackacre* or *White-acre*, to be cut down yearly by him-

himself, and to be delivered to the Grantee at such a day; though the Grantor fail at his day to make his election, yet his election is not gone, because the things granted are annual: but had these Trees been to be delivered to the Grantee once onely, and not yearly, then by the failor of the Grantor at the day the election is devolved to the Grantee.

SECT. XLIII.

AND thus much of the thing Granted: a word of the Instruments through whose hands, as through Conduit-pipes, the Lands are *gradatim* conveyed to the Purchasor. I will not speak of those men that are used as Instruments by special Custome to present in Court Surrenders taken out of Court: These I have sufficiently spoken of already. I will here point onely at these persons that, by the general Custome of every Manor, are imployed as necessary Instruments in Customary Admittances, and will cursorily examine the extents of their Authorities, and the quality of their Offices.

The persons I aim at are these;

1. The *Lord*,
2. The *Steward*,
3. The *Under-Steward*.

SECT. XLIV.

THE *Lord*'s Authority consisteth chiefly in these things.

1. In punishing Offences and Misdemeanors committed within his Precincts; as not performance of Customes, breach of By-laws, not discharging of Duties, and such like.

2. In deciding Controversies arising about the Title of Copy-hold-Land lying within his bounds: and when he sitteth as Judge in Court to end debates of this nature, he is not tied to the strict form of the Common Law, for he is a Chancellour in his Court, and may redress matters in Conscience upon Bill exhibited, where the Common Law will afford no remedy in the same kind; as to insist in one familiar Example. If I surrender a Copy-hold to the Use of a Stranger, upon confidence that, such Debts being by me discharged, he shall surrender back this Copy-hold; I upon discharge of the Debts demand a Surrender, and he refuseth: at the Common Law I were left remediless, this being a bare Confidence, and no Condition; but upon Bill exhibited in the Lord's Court I shall be relieved, for the Lord upon proof of the matter may

seise

ſeiſe the Copy-hold, and re-admit me, according to the effect of the Confidence.

3. In admitting Copy-hold. And in this Cuſtomary power of Admittance the Lord doth ſomewhat outſtrip the Steward; for the Lord may make either Admittances upon voluntary Grants, Admittances upon Surrenders, Admittances upon Deſcents, in any place where he pleaſeth out of the Manor, but ſo cannot the Steward: and in giving Licence to Copy-holders to aliene by Deed; and in this point of Licence the Lord's authority doth exceed the Steward's authority. For though ſome are of opinion, that it is both uſual and warrantable for the Steward of a Manor, in abſence of his Lord, to licenſe a Copy-holder in full Court to aliene by Deed for as many years as he ſhall think good, becauſe he is Judge in the Court, and beſides the Entry of it in the Court-Roll is in this manner, *Ad hanc Curiam* J. S. *petit licentiam Domini dimittendi, &c. Cui Dominus licentiam dat, &c.* and therefore this Licence being granted in the Lord's name in full Court, the Lord ſhall never enter for a Forfeiture, but ſhall ever be eſtopped to ſay the contrary, but that he did give Licence: yet (under reformation be it ſpoken) I muſt miſtruſt the truth of this opinion; for this power of

Co. 4 fo. 27.

of licensing Copy-holders to aliene by Deed is not customary, for then it wereas proper to the Steward as to the Lord, but it is a power of Interest annexed to the person of the Lord in respect of his Estate in the Manor, and not in any other collateral respect: and therefore the Steward having a bare authority to execute what the Custome of the Manor doth warrant, sans doubt he cannot *virtute officii* grant any unwarrantable Licence to aliene by Deed, no more then to commit Waste; for the one act as well as the other tendeth to the breach of Custome, and both of them, without a sufficient allowance, amount to the Forfeiture of a Copy-hold: but by expres words in the Steward's Patent, or by special authority given him by the Lord, or by some particular Custome warranting the same, the Steward may in Court lawfully license Copy-holders to aliene as well as the Lord may. And thus much of the Lord.

SECT. XLV.

STeward is derived from those two words, *Stede*, and *ward*; and so any that doth supply another's place, or that is in any imployment Deputy to another, may according to the true sense of the word be termed a

Steward;

Steward; as the High Steward of *England*, because the King appointeth him in divers matters to exercise his place; and so the Under-Sheriff may be termed by the name of the Sheriff's Steward, being his Deputy. And how properly the Lord's Steward is so named, any man may judge by this, that the whole Authority of the Steward is derived from the Lord as from the Head; and not onely so, but withall he representeth the Lord's person in many employments: for in the Lord's absence he sitteth as Judge in Court to punish Offences, determine Controversies, redress Injuries, and the like: and farther, some things he performeth in the Lord's name, and not in his own name; for if the Steward admitteth any Copy-holder, or by special Authority or particular Custome licenseth a Copy-holder to alienel, this Admittance and Licence shall be made in the Lord's name, and the Entry in the Court-Roll shall be, *Quòd Dominus per Senescallum admisit & licenciavit*, and not that the Steward did admit or licence. Therefore sithence the Steward hath this measure of Authority and Confidence committed unto him, the Lord shall doe very well to be very carefull in making choice of his Steward; for if he be defective in any one of these three qualities, Knowledge, Trust, or Diligence, the Lord

may

may be much prejudiced and damnified: therefore *Fleta* wiſely giveth the Lord this counſel, *Fleta l. 2. c. 6.* *Videat ſibi Dominus de Seneſcallo circumſpecto & fideli & pacifico & modeſto, qui in Legibus Conſuetudinibuſque Provinciæ Domini ſui in omnibus tueri affectet, quique Ballivos Domini in ſuis erroribus & ambiguis ſciat inſtruere & docere, quique egenis parcere, & nec prece vel pretio velit à tramite juſtitiæ deviare & perverſè judicare.*

These Stewards for the moſt part have Patents for their Offices, yet they may be retained by parol; and this Retainer by parol is as effectual in all points before diſcharge, as the moſt effectual inſtitution by Patent: for a Steward thus retained may take Surrender out of Court, or make voluntary Admittances, or any other act incident to the Office of a Steward, as well as a Steward inſtituted by Patent. But in the King's Manors a Steward cannot be retained by parol by the mouth of the Auditor or Receiver; but to make the Steward's Authority currant, eſpecially to make voluntary Admittances, it is neceſſary he have a Patent, and then, by virtue of his Patent, without any ſpecial Authority or particular Cuſtome, he may juſtifie the making of any voluntary Admittance upon Eſcheats or Forfei-

Co. 4. fo. 30. b.

Co. 4. fo. 30. a.

feitures, or the doing of any act belonging to his Office. But though he may *ex officio* doe thoſe things without ſpecial warrant, yet duty binds him, before he make any voluntary Admittance, to inform the Lord Treaſurer of *England*, the Chancellour, and Barons of the *Exchequer*, or any of them, for his better direction, and the King's better benefit. The Law is not very curious in examining the imperfections of the Steward's perſon, nor the unlawfulneſs of his Authority; for be he an Infant, or *non compos mentis*, an Idiot, or Lunatick, an Out-law, or an Excommunicate, yet what things ſoever he performeth as incident to his place, can never be avoided for any ſuch diſability, becauſe he performeth them as a Judge, or at leaſt as Cuſtome's Inſtrument: and for his Authority, though it prove but counterfeit if it come to exact triall, yet if in appearance or outward ſhew it ſeemeth currant, that is ſufficient. As if I grant the Stewardſhip of my Manor of *Dale* by Patent, and in the Patentee's abſence a Stranger by my appointment keepeth Court, this is authentical. If a Grant of a Stewardſhip be made to one, and for ſome fault or defect in the Grant it is avoidable, yet Courts kept by him before the Avoidance ſhall ſtand in force; and whatſoever he did

as

as Steward is ever unavoidable. As if a Corporation retaineth a Steward by parol, and he keepeth a Court, puniſheth Offences, decideth Controverſies, taketh Surrenders, maketh Admittances either upon Surrenders or Deſcents; theſe acts being judicial ſhall ever ſtand for currant, though his Authority be grounded upon a wrong foundation, for a Corporation cannot inſtitute any ſuch Officer without Writing. And ſo if the King's Auditor or Receiver retain a Steward by parol, he may lawfully execute any judicial Act; but things which he performeth as Cuſtome's Inſtrument, not as Judge, ſuch as are voluntary Admittances, neither in the Retainer by the Corporation, nor in this Retainer by the King's Officers, ſhall any whit binde: but if a Stranger, without the appointment of the Lord, or conſent of the right Steward, or without any colour of Authority, will of his own head come into a Manor, and keep a Court; it ſeemeth that the performance of any judicial duty, or the executing of any act whatſoever, will not be warranted, eſpecially if the Court be kept without warning given to the Bailiff by precept, according to the Cuſtome.

The Office of a Steward may be forfeit three manner of ways.

1. By

1. By Abuſer.
2. By Non-uſer.
3. By Refuſer.

1. By *Abuſer*. As if the Steward burn the Court-Rolls, or if he taketh a Bribe to wink at any Offence, or uſe Partiality in any cauſe depending before him; theſe and the like Abuſes will make him ſubject to a Forfeiture.

2. By *Non-uſer*. As if the Steward by his Patent being tied to keep Court at certain times of the year, without requeſt to be made by the Lord, faileth, and by his Failor the Lord receive any prejudice, this is a Forfeiture. But if the Lord be not damnified, then this Non-uſer is no Forfeiture. As if a Parker attends not for the ſpace of three or four days, and no prejudice or dammage happeneth in the interim, this is no Forfeiture. And in Offices which concern the adminiſtration of Juſtice, or the Commonwealth, the Law is more ſtrict then in theſe Offices which concern private men: for where an Officer *ex officio*, or of neceſſity, ought to attend for the Adminiſtration of Juſtice, or for the good of the Commonwealth, there Non-uſer or Non-attender in Court is a Forfeiture, though this be prejudicial to no man; as the Office of the Chamberlain in the *Exchequer*, a Protonotary, Clark

Clark of the Warrants, *Exigenter*, *Filazer*, or the like in the Common Pleas; becauſe the attendance of theſe and the like Officers is of neceſſity for the adminiſtration of Juſtice: ſo the attendance of the Clark of the Market is of neceſſity for the good of the Commonwealth, and ſo is holding of the Sheriff's Tourn, *&c.*

By *Refuſer* the Office of a Steward may be thus forfeited: If the Steward be tied by his Patent to keep Court upon a demand or requeſt to be made by the Lord, if the Lord demandeth or requeſteth him to keep a Court, and he faileth; this is a Forfeiture, though the Lord be thereby nothing damnified. And thus much of the Steward.

SECT. XLVI.

THE Under-Steward is the Steward's Deputy, and ſometimes appointed by writing, ſometimes by parol: and the extent of his Authority is as great as the Steward's own Authority, and his Office conſiſteth in performance of the ſelf-ſame Duties that the High Steward himſelf is to perform: onely in this point the power of the Steward goeth beyond the power of the Under-Steward, that the Steward can make an Admittance out of Court,

Court, and it ſhall ſtand good, if Entry be made in the Court-Roll, that he that is admitted hath paid his Fine and hath done Fealty; but the Under-ſteward, though he may take a Surrender out of the Court, yet he cannot make any Admittance out of Court, without ſpecial Authority or particular Cuſtome.

Some have thought that an Under-ſteward may be made without ſpecial words in the Steward's Patent authorizing him to make a Deputy; but ſurely, ſince it is an Office of knowledge, truſt and diſcretion, it cannot, unleſs it be in caſes of neceſſity. As if an Office of Stewardſhip deſcend unto an Infant, he may make a Deputy, becauſe the Law preſumeth he is himſelf uncapable to execute it. So if it be granted to an Earl, in reſpect of the exility of the Office in a baſe Court, and of the dignity of the perſon, who is *Præpoſitus Comitatus*, and had in ancient time the charge and cuſtody of the whole Shire, whoſe attendance the Law intendeth to be moſt neceſſary upon the King and the Commonwealth; therefore it is implied in Law, for the conveniency, that he may make a Deputy, for whom he ought to anſwer. This is one obſervation touching Under-ſtewards: In Admittances made by Under-ſtewards, as well as in Admittances made by the Stewards themſelves, it is good order to ex-

preſs in the Copy and in the Court-Roll the name of the Under-ſteward or the Steward; becauſe in pleading any Admittance a man muſt ſay that he was admitted by ſuch a one Under-ſteward or Steward, naming his name. And this ſhall ſuffice touching the manner and means of granting Copy-holds. Suffer me now in the fourth place to point at the ſeverall Eſtates of Copy-holders, together with their ſeverall qualities incident to their ſeverall Eſtates.

SECT. XLVII.

ALL Eſtates whatſoever may be reduced to one of theſe three Heads;

1. Inheritance,
2. Frank-tenant,
3. Chattells.

All *Inheritances* are of two ſorts; either Fee-ſimples, or Fee-tails.

Of *Fee-ſimples* ſome are determinable, ſome are undeterminable.

Determinable, as where Land is given to a man and his Heirs for ſo long time as *Paul's* Steeple ſhall ſtand.

Undeterminable, as where Land is given to a man and his Heirs without farther limitation.

Of

Of *Fee-tails* ſome are general, ſome are ſpecial.

General, as where Land is given to a man and the Heirs of his body, or Heirs-males or females of his body.

Special, as where Land is given to a man and the Heirs, males or females, which he ſhall beget of ſuch a woman.

All *Frank-tenants* are of two ſorts; either created by the act of the party, or by the act of the Law.

Of Frank-tenants created by the act of the party, ſome are determinable by Death, ſome by collateral means.

By Death, as Eſtates granted during the life of the Grantor, of the Grantee, or of a Stranger.

By collateral means, as Eſtates granted *quamdiu fuerit innupta*; to a Widow, *quamdiu remanſerit vidua*; or to a Miniſter, *quamdiu Sacerdotium exercuerit.*

Of Frank-tenants created by the act of the Law, ſome are Frank-tenants *ſimpliciter*, ſome *ſecundùm quid*. *Simpliciter*, as the Eſtates of a Tenant in Dower, of a Tenant by the curteſie, of an Occupant, a Tenant in tail after poſſibility of Iſſue extinct. *Secundùm quid*, as the Eſtates of a Tenant by Statute-Merchant, Statute-Staple, and *Elegit*; who though

they are to have the Land but for ſo many years as will give a plenary ſatisfaction to their Debts, yet by the Statute of *Weſtm.* 2. they may maintain an Aſſiſe, which no other Tenant having but a Chattel can have.

All *Chattels* are either certain, or incertain. Of Chattels certain, ſome are in themſelves certain, ſome are made certain by relation to a certainty. Certain in themſelves, as where Lands are granted for 20, 30, or 40 years. Certain by relation to a certainty, as where Land is granted for ſo many years as *J S* hath Acres of Land.

Of incertain Chattels, ſome are incertain in their commencement, ſome incertain in their determination.

In their Commencement, as where a Guardian hath an Eſtate during the Minority of the Heir.

All theſe Eſtates, either by the general or by the particular Cuſtomes of Manors, are of Copy-holds as well as of Free-holds: in what manner ſoever an Eſtate in Fee-ſimple is warranted by the Cuſtome, moſt inferiour Eſtates are by implication likewiſe warranted. All Frank-tenants created by the act of the party, the Eſtate of an Occupant, and all Chattels whatſoever, without any other particular Cuſtome, are hereby warranted.

Co. 4. fo. 23.

But

But the Law is otherwiſe of Eſtates in Dower, by the curteſie, by Statute-Merchant, Statute-Staple, or *Elegit*: Co. 4 fo. 22. a. for as long as ſuch a Copy-hold, by the Cuſtome of the Manor grantable in Fee-ſimple, continueth in the Copy-holder's hands, it is not liable to any of theſe Eſtates; but if once it cometh to the Lord by Eſcheat, Forfeiture, or by other means, ſo long as it remaineth re-united to the Manor, it is in the nature of a Free-hold, and ſhall be ſubject to the charges and incumbrances as Land at the Common Law. And howſoever by implication theſe Eſtates are not allowed in Copy-holds continuing in the Copy-hold poſſeſſion; yet by particular Cuſtome the Wife may be Tenant in Dower, the Husband Tenant by the curteſie, a Stranger Tenant by Statute-Merchant, Statute-Staple, or *Elegit*, of a Copy-hold reſting in the Copy-hold, as well as if it reſted in the Lord. Whether an Eſtate-tail, or an Eſtate-tail after poſſibility of Iſſue extinct, which hath a neceſſary depending upon an Eſtate-tail, may by any particular Cuſtome be allowed, that I may diſpute, but cannot determine; for it is *vexata quæſtio*, much controverted, but nothing concluded. I will briefly touch the reaſons alledged on both ſides. They which are againſt the validity of

Intails by ſpecial Cuſtome do chiefly urge theſe two reaſons: that no Eſtates-tail were before the *Stat. de Donis conditionalibus*, but all Inheritances were Fees conditional; and the Statute being made 13 *E.* 1. which is within the memory of man, it cannot be that any ſpecial Cuſtomes have any Commencement ſince the Statute, for then a Cuſtome might begin within time of memory, which is altogether repugnant to the rules of Cuſtome.

Two great Inconveniences would enſue if a Copy-holder might be Intailed by ſpecial Cuſtome, becauſe neither Fine nor common Recovery can bar it; ſo that he hath ſuch an Eſtate, that he cannot of himſelf, without the aſſent of the Lord, diſpoſe of it either for the payment of his Debts, for the advancement of his Wife, or preferment of his younger Sons.

SECT. XLVIII.

THE main reaſons inſiſted upon in defence of intailing Copy-holds are theſe.

1. In divers Manors they have been from time to time not onely reputed as Tenants in tail, but in every man's mouth termed by that name,

2. A Formedon in the Deſcender lieth of a Copy-holder, which Writ none can bring but Tenant in tail.

3. A Remainder limited upon ſuch an Eſtate in ſuch Manors hath been allowed, and therefore is no Fee conditional; for upon a Fee, whether abſolute or conditional, a Render can by no means depend.

4. It is a common uſage there by a Recovery to dock Intails of Copy-hold, or to defeat theſe Eſtates by Preſentment that the Copy-holder hath committed a Forfeiture, and ſo the Lord to ſeiſe, and then to ſurrender it to the Purchaſer; and therefore there is not that inconvenience which is ſuppoſed in the Copy-hold, *ſcilicet*, want of power to diſpoſe of ſuch an Eſtate without the Lord's conſent.

5. Much inconvenience would depend upon this, if Copy-holds might not be intailed; for it would tend to the ſubverſion and deſtruction of many mens Eſtates, which from time to time they have enjoyed without contradiction: and therefore for the quiet of the Commonwealth how neceſſary it is that Copy-holds ſhould be intailed, let any man judge.

Thus much of the ſeveral Eſtates of the Copy-hold: a word of their ſeveral Qualities incident to ſeveral Eſtates.

SECT. XLIX.

WHat Qualities ſoever are neceſſarily incident to Eſtates at the Common Law, are incident to Eſtates by Cuſtome. In illuſtrating this I will confine my ſelf to the diſcuſſing of theſe two Points.

1. What words will create Copy-holds of Inheritance, and what Copy-holds of Frank-tenant.

2. How Copy-holds of Inheritance ſhall deſcend.

Co. 4. fo. 29. Touching their Creation, Copy-holds of Inheritance and Copy-holds of Frank-tenement are created by the ſame words that Inheritance and Frank-tenement at the Common Law are created by.

If a Copy-hold be granted to a man and to his Heirs-males, or Heirs-females; if to a man *& ſanguini ſuo hæreditabili*; if to a Dean and Chapter, or to a Mayor and Commonalty, without any expreſs Eſtate, or without a limitation of ſome inferiour Eſtate: in all theſe Grants a perfect Eſtate in Fee paſſeth.

And ſo peradventure if I ſurrender a Copy-hold to a man and his Heirs, and he, reciting this Eſtate, re-ſurrendreth in the ſame manner to me that I ſurrendred to him, not making

king any mention of my Heir; yet this Recitall ſeemeth ſufficient to paſs a good Fee-ſimple.

So if I ſurrender unto you as large an Eſtate as *J S* hath in his Manor of *D*, and he hath a Fee-ſimple in his Manor; it is ſomewhat probable that an Eſtate in Fee-ſimple ſhould paſs, by reaſon of his relation, without the word *Heirs*.

If a Copy-hold be ſurrendred to a man *& ſemini ſuo hæreditabili de corpore*, or to a man *& hæredibus ex ipſo procreatis*, or to a man in Frank-marriage with his Wife; in theſe Grants an Eſtate-tail paſſeth in the firſt without the word *Heirs*, in the ſecond without the word *body*, in the third without either.

If the King by his Steward granteth a Copy-hold to a man and to his Heirs-males, or Heirs-females; no Fee-ſimple paſſeth, becauſe the Lord never intended to paſs ſuch an Eſtate.

If a Copy-hold be granted to an Abbot and to his Heirs, an Eſtate for life onely paſſeth.

So if I grant a Copy-hold to a man in Fee-ſimple ac *ſanguini ſuo imperpetuum*, or *ſibi & Aſſign. ſuis imperpetuum*; yet the word Heirs wanting, no greater Eſtate then for life paſſeth.

The

The ſame Law is, if a Copy-hold be granted to a man and to his Heirs as long as *J S* ſhall live; this is onely an Eſtate *pur auter vie*, and a Render limited upon this Eſtate is good.

But if a Copy-hold be granted to a man and to his Heirs as long as ſuch a Tree ſhall grow in ſuch a ground; this is a good Fee, and a Render limited upon it is void.

If a Copy-hold be granted to *J S* and *J N* *& Hæredibus*, they are Joynt-tenants for life; and no Inheritance paſſeth unto either, becauſe of the uncertainty for want of this word *ſuis*: but if a Copy-hold be granted to *J S* onely *& Hæredibus*, a good Fee-ſimple paſſeth without the word *ſuis*.

If a Copy-hold be granted to a man *& Hæredibus*, an Eſtate-tail doth not paſs, for want of the words *de corpore*. And if a Copy-hold be granted to a man *& Liberis aut Pueris ſuis de corpore*; an Eſtate-tail doth not paſs, for want of this word *Heirs*: for what Eſtates ſoever are Intails ſince the Statute *De donis conditionalibus* were Fee-ſimples conditional; but this could be no Fee-ſimple conditional before the Statute, without the word *Heirs*, and therefore no Intail ſince the Statute. And for the ſame reaſon, if a Copy-hold be granted to a man and to the

Iſſues

Iſſues-males of his body, an Eſtate for life onely paſſeth.

If a Copy-hold be granted to a man, without expreſſing any certain Eſtate by implication of Law, an Eſtate for life onely paſſeth: and if I grant a Copy-hold to three, *habend' um ſucceſſivè*, they are Joynt-tenants, unleſs by ſpecial Cuſtome the word *ſucceſſivè* make their Eſtates ſeverall. Thus much touching the creation of Copy-hold-eſtates.

SECT. L.

THE Deſcents of Copy-hold of Inheritance are guided and directed by the rules of the Common Law, as well as the creation of Copy-hold-eſtates.

If a Copy-holder in Fee-ſimple, having Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, dieth, and the Son by the firſt Venter entreth and dieth, the Land ſhall deſcend to the Daughter; *Quia poſſeſſio Fratris de Feodo ſimplici facit Sororem eſſe Haredem.*

But if a Copy-holder in tail have Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, and dieth, and the Son by the firſt Venter entreth and dieth; the Son of the ſecond Venter ſhall inherit.

If

If a man have Iſſue a Son and a Daughter by one Venter, and a Son by another Venter, the eldeſt Son purchaſeth a Copy-hold in Fee, and dieth without Iſſue; the Daughter ſhall have the Land, not the younger Son, becauſe he is but of the half bloud to the other.

If a man hath a Copy-hold by deſcent from his Mother's ſide, if he die without Iſſue, the Land ſhall goe to the Heirs of the Mother's ſide, and ſhall rather eſcheat then goe to the Heirs of the Father's ſide: but if I purchaſe a Copy-hold, and die without Iſſue, the Land ſhall goe to the Heirs of my Father's ſide; but if I have no Heirs of my Father's ſide, it ſhall goe to the Heirs of my Mother's ſide, rather then eſcheat.

If there be Father, Uncle and Son, and the Son purchaſeth a Copy-hold in Fee, and dieth without Iſſue; the Uncle ſhall inherit, and not the Father, becauſe an Inheritance may lineally deſcend, but not aſcend.

If there be three Brothers, and the middle Brother purchaſeth a Copy-hold in Fee, and dieth without Iſſue; the eldeſt ſhall inherit, becauſe the worthieſt of bloud.

If there be two Coparteners or two Tenants in common of a Copy-hold, and one dieth having Iſſue; the Iſſue ſhall inherit, and

not

not the other by the Survivorſhip : but otherwiſe it is of two Joynt-tenants. Should I give way to my Pen, and write of this Theme till I wanted matter to write on, I ſhould make a large Volume in dilating this one Point; therefore I will contract my ſelf, intreating you to ſupply by your private cogitations what I have either willingly or unwittingly paſſed over in ſilence, onely take this Caveat by the way.

Though all Qualities neceſſarily incident to Eſtates at the Common Law are likewiſe incident to Copy-hold-eſtates; yet the Law is not ſo of collateral Qualities without ſpecial Cuſtome; and therefore a Copy-hold ſhall be no Aſſets to the Heir. Co. 4 *fo.* 23. 1.

A Deſcent of a Copy-hold ſhall not toll an Entry. A Surrender made by Tenant in tail, (admit a Copy-hold may be intailed) or by a Baron of a Copy-hold, which he hath in right of his Wife, ſhall make no Diſcontinuance; becauſe theſe are collateral Qualities, and not neceſſarily incident.

Thus much of the ſeveral Eſtates of Copy-holds, together with their ſeveral Qualities incident to their ſeveral Eſtates. I come now in the fifth place to examine how Copy-holders are to implead and be impleaded.

SECT.

SECT. LI.

A Copy-holder cannot in any Action real, or that ſavoureth of the Realty, or hath a dependance upon the Realty, implead or be impleaded in any other Court but in the Lord's Court for or concerning his Copy-hold: but in Actions that are meerly perſonal he may ſue or be ſued at the Common Law.

If a Copy-holder be ouſted of his Copy-hold by a Stranger, he cannot implead him by the King's Writ, but by Plaint in the Lord's Court, and ſhall make Proteſtation to proſecute the Suit in the nature of an Aſſiſe of Novel Diſſeiſin, of an Aſſiſe of Mortdanceſtor, of a Formedon in the Deſcender, Reverſer, or Remainder, or in the nature of any other Writ, as his cauſe ſhall require, and ſhall put in *Pleg. de proſequend.*

If a Copy-holder be ouſted by the Lord, he cannot maintain an Aſſiſe at the Common Law, becauſe he wanteth a Frank-tenant; but he may have an Action of Treſpaſs againſt him at the Common Law: for it is againſt reaſon, that the Lord ſhould be Judge where he himſelf is a Party.

If

If in a Plaint in the Lord's Court touching the Title of a Copy-holder, the Lord giveth falſe Judgment, he cannot maintain a Writ of falſe Judgment; for then he ſhould be reſtored to a Frank-tenant, where he loſt none.

No Copy-holder of baſe Tenure in Ancient demeſne can maintain a Writ of *Droit cloſe*, or a Writ of *Monſtraverunt*; but Tenants of Frank-tenure in Ancient demeſne can.

A Copy-holder that may cut down Timber-trees by Cuſtome, by licence of the Lord maketh a Leaſe for years, the Leſſee cutteth down Trees; the Copy-holder ſhall not have a Writ of Waſte, but ſhall ſue at the Lord's Court to puniſh this Waſte.

If a Feme dowable by Cuſtome of a Copy-hold by Plaint in the Lord's Court recovereth Dower and Dammages, no Action of Debt lieth at the Common Law for theſe Dammages, becauſe the Action, though it be in it ſelf perſonal, yet it dependeth upon the Realty.

If a Copy-holder maketh a Leaſe by Copy for years, or by Deed with licence, an Action of Debt lieth for the Rent reſerved upon either Leaſe at the Common Law: but I much doubt whether he can avow for the Rent either in the one or in the other, any more then

Ceſtuy

Ceſtuy que uſe, before the Statute 27 *H.* 8. *cap.* 10. could avow for the Rent reſerved by him upon a Leaſe for years, and yet he could maintain an Action of Debt for ſuch a Rent, becauſe an Action of Debt is grounded upon the Contract.

If a Stranger cut down Trees growing in the Copy-hold-ground, an Action of Treſpaſs lieth at the Common Law againſt him: ſo doth it againſt the Lord, where he cutteth them down when by Cuſtome they belong to the Tenant; becauſe this is a meer perſonal Action, and Dammages onely are to be recovered.

And if a Copy-holder without licence maketh a Leaſe for one year, or with licence maketh a Leaſe for many years, and the Leſſee be ejected; he ſhall not ſue in the Lord's Court by Plaint, but ſhall have an *Ejectio firmæ* at the Common Law, becauſe he hath not a Cuſtomary Eſtate by Copy, but a warrantable Eſtate by the rules of the Common Law. Thus much of the manner how Copy-holders are to implead and be impleaded.

SECT.

SECT. LII.

I Come now, in the ſixth place, to ſhew under what Statutes Copy-holders are comprehended. Copy-holders are comprehended under Statute, either by expreſs limitation in preciſe words, or by a ſecret implication upon general words.

By expreſs limitation in preciſe words: As by the Statute of 1 *R.* 3. *cap.* 4. it is expreſly provided, that a Copy-holder, having Copy-hold-Land to the yearly value of twenty ſix ſhillings and ſix pence above all charges, may be impannelled upon a Jury as well as he that hath twenty ſhillings *per annum* of Free-hold-Land.

So by the Statute of 1 *E.* 6. *cap.* 14. it is expreſly provided, that upon the Diſſolution of Abbies and Monaſteries Copy-holds ſhould continue as they did before the Statute, and ſhould fall into the King's hands.

So by the Statute of 2 *E.* 6. *cap.* 8. it is expreſly provided, that the Intereſt of a Copy-hold ſhould be preſerved, notwithſtanding it be not found by Office after the deceaſe of the King's Tenant.

So by the Statute of 1 *Mar. cap.* 12. it is expreſly provided, that if any Copy-holder,

being Yeoman, Artificer, Husbandman, or Labourer, and being of the age of eighteen or more, under the age of sixty, not sick, impotent, lame, maimed, nor having any other just or reasonable cause of excuse, upon request made by any man in Authority, refuseth to aid Justices in suppressing of Riotous persons; that then immediately he shall forfeit his Copy-hold to the Lord of whom it is held during the Copy-holder's natural life.

So by the Statute of 5 *Eliz. cap.* 14. it is expresly provided, that the forging of a Court-Roll, to the intent to defraud a Copy-holder, shall be as well punishable as the forging any other Charter, Deed, or Writing sealed, whereby to defeat a Copy-holder or Free-holder.

So by the Statute of 13 *Eliz. cap.* 7. it is expresly provided, that the Copy-hold-Land as well as the Free-hold-Land of a Bankrupt shall be sold for the satisfying of the Creditor.

So by the Statute of 14 *Eliz. cap.* 6. it is expresly provided, that if any of the Queen's Subjects goeth beyond the Seas without Licence, that then the Queen shall not onely take the ordinary Profits of the Fugitives Copy-hold-Land as they arise, but shall let, set, and make Grants by Copy, and usual Wood-

sales,

ſales, and other things, to all intents and purpoſes as a Tenant *pro term. durante vitâ* may doe.

So by the Statute of 35 *Eliz. cap.* 2. it is expreſly provided, that if any perſon or perſons being convicted of Recuſancy repair not home to their uſual place of Abode, nor removing from thence above five miles diſtance, that then any perſon or perſons thus offending ſhall not onely forfeit their Free-hold-Land to the Queen, but withall their Copy-hold-Land to the Lord or Lords of whom it is holden.

Thus have I ſhewed in brief under what Statutes Copy-holders are comprehended by expreſs limitation in preciſe words. Now I will ſhew you as briefly as I can under what Statutes they are comprehended by ſecret implication upon generall words.

SECT. LIII.

SOme hold that all Statutes that ſpeak generally of Tenants extend to Tenants by Copy: but it is much to be feared that we ſhall wander from the Truth, if we give credit to this conceit; for if we peruſe the Statutes, we ſhall meet with an infinite number of them that ſpeak generally of Tenants,

and yet touch not Tenants by Copy: wherefore not giving way to this Opinion, as being erroneous, I will ſet you down an infallible Rule, which will truly direct you in the expoſition of the general words in Statutes; and that is thus.

When an Act in Parliament altereth the Service, Tenure or Intereſt of the Land, or other thing in prejudice of the Lord, or of the Cuſtome of the Manor, or in prejudice of the Tenant, there the general words of ſuch an Act in Parliament extend not to the Copy-hold: but when an Act is generally made for the good of the Commonwealth, and no prejudice may accrue by reaſon of the Alteration of any Intereſt, Service, Tenure or Cuſtome of the Manor, there uſually Copy-holds are within the general purview of ſuch Acts. Co. 3. fo. 8.

The Statute of *Weſtm.* 2. *cap.* 1. of Intails extendeth not to Copy-holds, becauſe it would be prejudicial to the Lord; for by this means the Tenure is altered: for the Donee in tail, without any ſpecial Reſervation, ought to hold of the Donor by the ſame Service that the Donor holdeth over. Beſides, the words of the Statute are, *Quòd voluntas Donator. in charta Domini ſui manifeſtè expreſſa de cætero obſervetur*; which proveth, that

that the intent of the Statute was, that no Hereditament ſhould be intailed within this Statute, but ſuch an one as either was given, or at leaſt may be given, by Charter or Deed; but Copy-holds are no ſuch Hereditaments, and therefore not within the body of the Act. Yet it is holden, that Cuſtome with the cooperation of the Statute will make an Eſtate-tail.

The Statute of *W.* 2. *cap.* 20. which giveth the *Elegit*, extendeth not to Copy-hold, becauſe it would be prejudicial to the Lord, and a breach of the Cuſtome, that any Stranger ſhould have Intereſt in the Lands holden by Copy, without the Admittance and ordinary Allowance of the Lord.

The Statute of 16 *R.* 2. *cap.* 5. which maketh it a Forfeiture of Lands, Tenements and Hereditaments to the Purchaſor of Excommunications, Bulls, *&c.* in the Court of *Rome* againſt the King, *&c.* extendeth not to Copy-hold; becauſe it would be prejudiciall to the Lord to have the King ſo far intereſſed in his Copy-hold without his conſent.

The Statute of 2 *H.* 5. *cap.* 7. of Hereticks extends not to Copy-holds: for though the Lord of a Manor is yearly to receive a benefit, in having the Lands after the year

and the day forfeited unto him; yet because the King is a sharer in this Forfeiture, therefore Lands by Copy are not comprehended under the general words: besides, the Statute speaketh of the King's having *Annum, diem & vastum* of these Lands forfeited for Heresie, as in Lands forfeited for Felony; whereby it appeareth that the meaning of the Statute is, that such Lands onely should be forfeited in which the King by the ordinary course of the Law should have *Annum, diem & vastum*, if the Tenant of them had committed Felony; but such Lands are not Lands by Copy, for if a Copy-holder committeth Felony, his Copy-hold is presently forfeited to the Lord. Therefore Copy-holds are out of the general purview of this Statute.

SECT. LIV.

THE Statute of 27 *H.* 8. *cap.* 10. of Uses toucheth not Copy-holds, because the transmutation of Possession by the sole operation of the Statute, without allowance of the Lord or the Agreement of the Tenant, would tend to the prejudice both of the Lord and of the Tenant: and the Branch of the same Statute which speaketh of Joyntures toucheth not Copy-holds, because Dowers of Copy-holds

are

are warranted by ſpecial Cuſtome onely, and not by the Common Law, or by the general Cuſtome.

The Statute of 31 *H.* 8. *cap.* 1. and 32 *H.* 8. *cap.* 32. by which Joynt-tenants and Tenants in common are compellable to make Partition by a Writ *De partitione faciendâ* as Coparteners at the Common Law, touch not Copy-holds; becauſe this alteration of the Tenure without the Lord's conſent may ſound to the prejudice of the Lord.

The Statute of 32 *H.* 8. *cap.* 28. which confirmeth Leaſes for 21 years or three Lives made by Tenants in tail, or by the Husband and Wife of the Lands of the Wife, toucheth not Copy-hold; for the Statute ſpeaketh of Leaſes made by Deed onely: ſo that the intent of the Statute is to warrant the Leaſing of ſuch Lands onely as are grantable by Deed, but ſuch are not Copy-hold-lands: for though they may by Licence of the Lord be demiſed by Indenture, yet in their own name they are demiſable onely by Copy, and therefore out of the general purview of the Statute. For the ſame reaſon the ſame Statute *cap.* 34. which giveth an Entry to the Grantee of a Reverſion upon the breach of a Condition by the particular Tenant toucheth not Copy-holds.

SECT. LV.

THE Statute of 17 *E.*2. *cap.*10. which giveth the Wardſhips of Idiots Land unto the King, toucheth not the Idiots Copy-hold; for thereby great prejudice would accrue to the Lord.

But the Statute of *Merton*, *cap.* 1. which giveth Dammages to a Feme upon a Recovery in a Writ of Dower, where the Baron dieth ſeiſed, extendeth to Copy-hold. Co.4.fo.30.b.

So that the Statute of *Weſtm.*2. *cap.*3. and the three ſeveral Branches of the ſame Statute, 1. the one, which giveth the *Cui in vita* upon a Diſcontinuance made by the Baron, 2. the ſecond, which giveth the Receit unto the Feme upon the Baron's refuſal to defend the Wife's Title, 3. and the third, which giveth a *Quod ei deforceat* to particular Tenants, extends to Copy-hold.

So that the Statute of 31 *H.* 8. *cap.* 13. of Monaſter. which provideth for the avoidance of doubling of Eſtates, and the Statute 32 *H.*8. *cap.* 9. againſt Champerty, and buying of litigious Titles, and *cap.* 28. which giveth an Entry in lieu of a *Cui in vita*, extend all to Copy-holds; becauſe Co.4.fo.26.

theſe

theſe Statutes are beneficial to the Commonwealth, and not at all prejudicial to the Lord in the alteration of Tenure, Eſtate, Service, *&c.*

So the Statute of 4 *H.* 7. *cap.* 24. of Fines extendeth to Copy-holds; for if a Copy-holder be diſſeiſed, and the Diſſeiſor levieth a Fine with Proclamations, and five years paſs without any Claim made, this is a Bar both to the Lord and to the Copy-holder.

So if a Copy-holder make a Feoffment in Fee, and the Feoffee levieth a Fine with Proclamation, and five years paſs, the Lord is barred: but if a Copy-holder levy a Fine, and five years paſs, the Lord is not barred, for the Fine levied, the Copy-hold, having no Frank-tenant, is utterly void. And whereas it hath been doubted that this Statute ſhould not extend to Copy-hold, but the Lord ſhould hereby receive grand prejudice; for he ſhould not onely loſe the Fines upon Alienations or Deſcents, and the benefit of Forfeitute, but ſhould withall be in hazard to be barred of his Frank-tenant and Inheritance: To that I anſwer; If the Lord receive any ſuch prejudice, it is through his own default, for not making Claim, for in regard of the privity in Eſtate that is between him and the

Co. 9. fo. 105. a.

the Copy-holder he may make Claim as well as the Copy-holder himſelf: *Et vigilantibus, non dormientibus, Jura ſubveniunt.*

Thus have I ſhewed under what Statutes Copy-holds are comprehended. I come now in the ſeventh place to ſpeak of Fines.

SECT. LVI.

A *Fine* is a ſumme of money paid to the Lord of the Manor for an Income into any Lands or Tenements. In ſome Manors Fines are certain, in ſome incertain.

By ſpecial Cuſtome Copy-holders are to pay Fines upon Licences granted unto them to demiſe by Indenture; but by general Cuſtome they are to pay Fines onely upon Admittances.

If the Lord having a Copy-hold by Eſcheat, Forfeiture, or other means, maketh a voluntary Admittance, a Fine is due unto the Lord.

If a Copy-holder ſurrendreth to the Uſe of a Stranger, and the Lord admitteth, a Fine is due to the Lord.

So if a Copy-hold deſcendeth, and the Lord admitteth the Heir, where by the Cuſtome of the Manor the Wife is to have Dower, and the Husband is to be Tenant by

the

the curteſie of a Copy-hold; either of them ſhall be admitted, and ſhall pay a Fine to the Lord.

If a Copy-hold be granted *durante vitâ*, and the Grantee dieth, living *Ceſtuy que vie*, and a Stranger entreth as a general Occupant; he ſhall be admitted, and ſhall pay a Fine.

And ſo if a Copy-hold be granted to one and his Heirs *durante vitâ*, and the Grantee dieth, and his Heir entreth as a ſpecial Occupant, where by the Cuſtome of the Manor a Copy-hold may be extended; upon the Extent the party ſhall be admitted, and ſhall pay a Fine.

Where, by the Cuſtome of the Manor, the Bailiff of the Manor is to have the Wardſhip of the Copy-hold-Heir being under the age of fourteen; ſuch a Guardian ſhall neither be admitted, nor pay a Fine, becauſe he is but a Partner of the Profits, and that not in his own right, but in the right of him to whom he is Guardian.

If the Copy-hold-Lands of a Bankrupt be ſold according to the Statute of the 13 *Eliz. cap.* 7. the Vendee ſhall be admitted, and pay a Fine.

If a Villain purchaſeth a Copy-hold, the Lord of the Villain may enter and ſeiſe it, and the

the Lord of the Manor ſhall admit him, and have a Fine.

If a Copy-hold be granted upon Condition, and the Condition be broken, and the Grantor entreth, he ſhall not be admitted, neither pay a Fine; becauſe upon the breach of the Condition and the Entry, he is to all intents *in ſtatu quo priùs*, as if no Grant at all had been made.

If a Copy-holder in Fee ſurrendreth for life, reſerving the Reverſion, and the Leſſee for life dieth; the Copy-holder ſhall not be admitted to his Reverſion, neither ſhall he pay a Fine, becauſe the Reverſion was never out of him.

If a Copy-holder be diſſeiſed, and then entereth upon the Diſſeiſor, or recovereth by Plaint in the nature of an Aſſiſe, he ſhall not be admitted, neither ſhall he pay a Fine; for he continueth ſtill Tenant by Copy, notwithſtanding the Diſſeiſin: but where by a Plaint a Copy-hold is recovered upon the accruer of a new Title, where he that recovereth was never admitted nor paid Fine; there upon his Recovery an Admittance is requiſite, and a Fine is due: as if a Copy-holder dieth ſeiſed, a Stranger abateth, and the Heir recovereth by Plaint in the nature of an Aſſiſe of *Mortdanceſtor*, upon this Recovery

very he ſhall be admitted, and pay a Fine.

If I take a Wife with a Copy-hold in Fee, though by this Inter-marriage there accrueth a preſent Intereſt to me; yet becauſe I am ſeiſed not *jure proprio*, but *jure alieno*, therefore I ſhall not be admitted, neither ſhall I pay a Fine.

The ſame Law is, if ſhe be a Termor of a Copy-hold: for though the Term by the Inter-marriage be ſo veſted in me that I may diſpoſe of it without controul; yet becauſe before Diſpoſer I am poſſeſſed of it but in the right of my Wife, therefore I ſhall neither be admitted, nor pay a Fine. *Vid.* Plowden *Com.* 418. *b.*

If a Copy-hold be ſurrendred for life, the Remainder to a Stranger; though the Admittance of Tenant for life be ſufficient to inveſt the Eſtate in him in the Remainder, yet upon the death of Tenant for life, he in the Remainder ſhall be admitted, and pay a Fine.

So if a Copy-hold be granted to three *habend. ſucceſſivè*, where by Cuſtome Succeſſion is in force; if any one dieth, he that next ſucceedeth ſhall be admitted, and pay a Fine.

If two Copartners or Tenants in common of a Copy-hold be, and the one dieth, and the other hath all by Deſcent; he ſhall be

be admitted, and ſhall pay a Fine. But if two Joynt-tenants be of a Copy-hold, and one dieth; the other ſhall have all by the Survivorſhip without Admittance, or paying Fine, becauſe Joynt-tenants to all intents and purpoſes are ſeiſed *per my & per tout.*

If two ſeverall Copy-holders joyn in a Grant of their Copy-hold by one Copy; or if one Copy-holder, having ſeverall Copy-holds, granteth them by one Copy; yet the Grantee ſhall pay ſeverall Fines, for they ſhall inure as ſeveral Grants.

But if two Joynt-tenants, two Tenants in common, or Tenant for life and he in the Remainder, joyn in the Grant of a Copy-hold; one Fine onely is due, and it ſhall inure as one Grant onely: ſo if a Surrender be made, and after a common Recovery is had by Plaint in the nature of a Writ of Entry *in le poſt*, for the better Aſſurance, one Fine onely ſhall be paid.

Co. 4. *fo.* 27. *b.*

And thus much of Fines. I come now in the next place to *Forfeitures*: wherein I will chiefly rely upon theſe four Points.

1. What Acts amount to a Forfeiture.
2. What Perſons are able to forfeit.
3. What Perſons are able to take benefit of a Forfeiture.

4. What

4. What Acts amount to a Confirmation of an Eſtate forfeit.

SECT. LVII.

OF Acts which amount to Forfeiture, ſome are Forfeits *eo inſtante* that they are committed, ſome are not Forfeits till Preſentment. Offences which are apparent and notorious, of which the Lord by common preſumption cannot chuſe but have notice, are Forfeitures *eo inſtante* that they are committed: as if by ſpecial Cuſtome, upon the Deſcent of any Copy-hold of Inheritance, the Heir is tied upon three ſolemn Proclamations, made at three ſeverall Courts, to come in and be admitted to his Copy-hold; if he faileth to come, in this Failer is a Forfeiture *ipſo facto*.

So if a Copy-holder be ſufficiently warned to appear, and he faileth; this is a Forfeiture *ipſo facto*.

But if he be hindred by ſickneſs, or by over-flowing of waters, or if he be much in Debt, and fear to be arreſted, or if he be a Bankrupt, and keepeth his houſe; then his Default is no Forfeiture.

If a Copy-holder in the Court be called and ſummoned to be ſworn of the Homage, and re-

refuſeth; this is a Forfeiture *ipſo facto.*

So if a Copy-holder be ſworn of the Homage, and then refuſeth to preſent the Articles according to his Oath; this is a Forfeiture *ipſo facto.*

So if a Copy-holder will ſwear in Court that he is none of the Lord's Copy-holder; this is a Forfeiture *ipſo facto.*

But if a Copy-holder in preſence of the Court ſpeaketh unreverent words of the Lord, as that the Lord exacteth and extorteth unreaſonable Fines and undue Services; this is fineable onely, but no Forfeiture: and if he ſaith in Court, that he will deviſe a means no longer to be the Lord's Copy-holder, this is neither cauſe of Fine nor Forfeiture; for peradventure the means that he intended was lawfull, *viz.* by paſſing away his Copy-hold. *Et ubi ſenſus verborum eſt multiplex, verba ſemper ſunt accipienda in meliori ſenſu.*

If the Steward ſheweth a Court-Roll to a Copy-holder, to prove that his Land is holden by Copy, and the Copy-holder ſaith he is a Free-holder, and ſheweth a Deed, pretending thereby to procure his Land to be Free-hold, and teareth in pieces the Court-Roll; this is a Forfeiture *ipſo facto.*

So if the Lord, upon the Admittance of a Copy-holder, the Fine by the Cuſtome

Co. 4. fo. 27. b.

ſtome of the Manor being certain, demandeth his Fine, and the Copy-holder denieth to pay it upon demand; this is a Forfeiture *ipſo facto*.

So if a Copy-holder will ſue a Replevin againſt the Lord, upon the Lord's lawfull Diſtreſs for his Rent or Services; this is a Forfeiture *ipſo facto*.

But if the Copy-holder be in doubt whether it be due or not, and therefore intreateth the Lord that the Homage may inquire the truth; this is no Forfeiture.

If the Fine by the Cuſtome of the Manor be incertain, though a reaſonable Fine be aſſeſſed, yet becauſe no man can provide for an Incertainty, the Copy-holder is not bound to pay it preſently upon demand, but ſhall have convenient time to diſcharge it, if the Lord limit no certain day for payment thereof; and if within convenient time it be not diſcharged, this is a Forfeiture without Preſentment.

But if the Fine be unreaſonable, though it be never paid, it is no Forfeiture; and it ſhall be determined by the opinion of the Juſtices before whom the matter dependeth, either upon a Demurrer, or in Evidence to the Jury, upon the confeſſion or proof of the yearly value of the Land, whether the Fine be reaſo-

nable or not: for if the Lords might aſſeſſe unreaſonable Fines at their pleaſures, then moſt Eſtates by Copy, which are a great part of the Kingdome, and which have continued time out of minde, might now at the will of the Lords be defeated and deſtroyed, which would be very inconvenient.

If the Lord demandeth his Rent, and the Copy-holder denieth to pay it; this is a Forfeiture *ipſo facto*.

So if the Copy-holder ſaith, that he wanteth money to diſcharge the Rent, and therefore intreateth the Lord to forbear untill he be better provided; unleſs the Lord giveth his conſent, this Non-payment is a Forfeiture *ipſo facto*.

For a Copy-holder, knowing his day of payment, is to provide againſt the day. But if the Lord cometh upon the Copy-holder's Ground, and demandeth his Rent, and neither the Copy-holder himſelf, nor any other by his appointment, is there preſent to anſwer their demand, though this be a Denial in Law of the Rent, yet this is no Forfeiture.

But if the Lord continueth in making demand upon the Ground, and the Copy-holder is ſtill abſent; this continual Denial in Law amounteth to a denial in fact, and maketh the Copy-holder's Eſtate ſubject to a Forfeiture without Preſentment. If

If a Copy-holder for life ſuffereth a Recovery by Plaint in the Lord's Court as Copyhold of the Inheritance, this is a Forfeiture *ipſo facto.*

But if he ſurrender in Fee, this is no Forfeiture, becauſe it did not paſs by Livery.

If a Copy-holder committeth Waſte voluntary or permiſſive, this is a Forfeiture *ipſo facto.*

Voluntary: As if he plucketh down any ancient-built Houſe, or if he buildeth any new Houſe, and then pulleth it down again; or if he ploweth Meadow, ſo that thereby the Ground is made worſe; or loppeth the Trees, or ſelleth the Lopping; or if he cutteth down any Fruit-trees for Fuell, having other wood ſufficient; theſe and the like voluntary Waſtes are Forfeitures *ipſo facto.*

Permiſſive: As if he ſuffereth his Houſe to decay or fall to ground for want of neceſſary Reparations; or if he ſuffereth his Meadow for want of mending his Banks to be ſurrounded, ſo that it becomes Ruſhy, or worth nothing; or his Arable ground ſo to be ſurrounded, that it is become unprofitable; theſe and the like permiſſive Waſtes are Forfeitures *ipſo facto.*

And thus much of Acts which are Forfeitures *eo inſtante* that they are committed. A

word of those Acts which are said not Forfeitures till Presentment.

SECT. LVIII.

AND such are those Offences which by common presumption the Lord cannot of himself have notice of, without notice given; as if a Copy-holder committeth Felony or Treason.

So if a Copy-holder be Out-lawed or Excommunicate; that the Lord may have the Profits of his Copy-hold-Land, a Presentment is necessary.

So if a Copy-holder goeth about in any other Court to intitle any other Lord unto his Copy-hold, or if he alieneth by Deed; these and the like ought to be presented.

If a Copy-holder maketh a Bargain and sale of his Copy-hold, and it is not inrolled according to the Statute; this is no Forfeiture, no more then a Feoffment without Livery; because nothing passeth.

So if a Copy-holder maketh a Feoffment of all his Lands in *Dale*, and maketh Livery in his Charter-Lands; no part of his Copy-hold-Land is thereby forfeited: but if Livery be made in any part of the Copy-hold-Lands, all his Copy-hold-Lands are forfeited.

If

If a Copy-holder, by Deed of Bargain and ſale inrolled according to the Statute, doth bargain and ſell all his Lands in *Dale*, having both Copy-hold and Free-hold, his Copy-hold is not thereby forfeited; for the Law will conſtrue this to extend to his Free-hold onely, rather then by any over-large conſtruction make a Forfeiture in this kind.

And if a Copy-holder by Deed inrolled bargaineth or ſelleth all his Copy-hold-Lands in *Dale*, or all his Lands in *Dale* generally, having no Free-hold-Lands; this is a Forfeiture.

Thus I have ſhewed you what Acts amount to a Forfeiture. Now I will ſhew you what Perſons are able to forfeit.

SECT. LIX.

A Man *non ſanæ memoriæ*, an Idiot or a Lunatick, though they be able to take a Copy-hold, yet they are unable to forfeit a Copy-hold, becauſe they want common Reaſon, nay common Senſe.

So an Infant that is under the age of fourteen is unable to forfeit his Copy-hold, becauſe he wanteth Diſcretion; and till then he is to be in Ward to the next of his Kindred to whom the Inheritance cannot deſcend, or to

the Lord or the Bailiff of the Manor, as the Cuſtome ſhall warrant.

So a Feme-covert, by any act ſhe can doe of her ſelf, cannot poſſibly forfeit her Copy-hold, becauſe ſhe is not *ſui juris, ſed ſub poteſtate viri*: but if ſhe doe any act which amounteth to a Forfeiture by the conſent of her Husband, this is in her a Forfeiture.

An Infant at the age of Diſcretion may forfeit his Copy-hold, not by Offences which proceed from Negligence or Ignorance, but by ſuch as proceed from Contempt.

If an Infant come not in to be admitted, according to the Cuſtome, at three ſolemn Proclamations made at three ſeveral Courts, or if he will ſuffer his Houſes to goe to ruine, or his Ground to be ſurrounded; theſe acts, ſavouring of Negligence onely, are no Forfeitures.

So if an Infant Copy-holder ſueth a Replevin againſt the Lord upon a Diſtreſs lawfully taken, or if he alieneth by Deed, or the like; theſe acts, reliſhing of Ignorance onely, are no Forfeitures.

But if he denieth from time to time to pay the Lord the Rent, or committeth voluntary Waſte, notwithſtanding often warning given him by the Lord; theſe acts, proceeding from Malice and Contempt, are Forfeitures:

and

and ſo if he committeth Felony or Treaſon.

If a Guardian of a Copy-holder committeth Waſte, he ſhall forfeit the Wardſhip onely, not the Inheritance of the Copy-hold.

If *Ceſtuy que uſe* of a Copy-hold committeth Waſte, he ſhall not forfeit the Copy-hold.

If the Husband committeth Waſte in Copy-hold-Lands which he hath in the right of his Wife; this is a Forfeiture of the Wife's Copy-hold. Co. 4. fo. 27. a.

But if a Stranger committeth Waſte without the conſent of the Husband; this is no Forfeiture, though the Wife conſenteth.

If a Diſſeiſor of a Copy-hold committeth Waſte, this is no Forfeiture.

So if a Copy-hold be ſurrendred to the Uſe of *J S*, and before Admittance *J S* committeth Waſte; this is no Forfeiture, for by the ſame reaſon that he cannot grant before Admittance, he cannot forfeit before Admittance.

If two Joynt-tenants be of a Copy-hold, and one committeth Waſte, he forfeiteth his part onely; for no man can forfeit more then he hath granted.

And therefore if there be Tenant for life with a Remainder over of a Copy-hold, and the Copy-holder for life purchaſeth the Manor,

committeth Waſte, or doth any act which amounteth to the Extinguiſhment or the Forfeiture of a Copy-hold; yet the Remainder is not hereby touched.

And ſo if a Copy-hold be granted to three *habend. ſucceſſivè*, where by the Cuſtome of the Manor this word *ſucceſſivè* taketh place; the firſt Copy-holder cannot prejudice the other two by any act he can doe, no more then if a Copy-holder in Fee by Licence maketh a Leaſe for years by Deed, or without Licence by Copy, and either of theſe Leſſees committeth Waſte, the Reverſion is not hereby forfeited.

If I have two ſeveral Copy-holds by two ſeveral Copies, and I commit Waſte in one; this is a Forfeiture of this one onely, and not of the other.

And ſo if I grant theſe ſeveral Copy-holds by one Copy, yet they continue ſeveral as they did before; and the Forfeiture of the one is not the Forfeiture of the other.

The ſame Law is, if two ſeveral Copy-holds eſcheat to the Lord, and he re-granteth them again by one Copy.

And thus have I ſhewed what Perſons are able to forfeit. I will now in a word ſhew what Perſons are able to take benefit of a Forfeiture.

SECT.

SECT. LX.

REgularly it is true, that none can take benefit of a Forfeiture, but he that is Lord of the Manor at the time of the Forfeiture.

And therefore if a Copy-holder maketh a Feoffment, and then the Lord alieneth, neither the Grantor nor the Grantee can take benefit of this Forfeiture; for neither a Right of Entry nor a Right of Action can ever be transferred from one to another. And therefore if a Free-holder alieneth in Mortmain, and then the Lord granteth away his Seigniory, neither the one nor the other can ever take benefit of this Forfeiture.

So if a Leſſee for life committeth Waſte, and then the Leſſor granteth away the Reverſion; this Waſte is made diſpuniſhable.

But if Tenant for life be of a Manor, with Remainder over in Fee to a Stranger, if a Copy-holder committeth Waſte, and then Tenant for life of the Manor dieth before Entry; yet he in Remainder may enter, for he had an Intereſt in the Manor at the time of the Forfeiture committed, though he could not enter by reaſon of the State in Tenant for life, which being determined, his Entry is now accrued unto him for the Forfeiture com-

committed in the life of Tenant for life.

And ſometimes he that is neither Lord of the Manor at the time of the Forfeiture committed, nor ever after, ſhall take benefit of a Forfeiture.

As if a Lord of a Manor granteth a Copy-hold in Fee, and then granteth the Frank-tenement or the Inheritance of this Copy-hold to a Stranger; the Grantee, though no Lord of the Manor, nor able to keep any Court, ſhall take benefit of Forfeitures made by the Copy-holder; as if the Copy-holder do make a Feoffment, Leaſe, Waſte, deny the Rent, *&c.*

Co. 4. fo. 24.

Thus have I ſhewed what Perſons are able to take benefit of a Forfeiture. I will now in one word ſhew what Acts amount to a Confirmation of an Eſtate forfeited.

SECT. LXI.

IF the Lord doth any thing whereby he doth acknowledge him his Tenant after Forfeiture; this Acknowledgment amounteth to a Confirmation: as if he diſtraineth upon the Ground for Rent due after Forfeiture, or if he admitteth after the Forfeiture, or the like; theſe are Eſtoppels to the Lord, ſo that he can never enter, ſo the Lord have notice of ſuch

ſuch Forfeitures before any ſuch act which may amount to a Confirmation be done. Yet ſome make this difference, that theſe Forfeitures onely which deſtroy not the Copy-hold are confirmable by ſubſequent Acknowledgment, and not thoſe Forfeitures which tend to the deſtructions of a Copy-hold; as if the Copy-holder maketh a Feoffment, by this the Copy-holder is deſtroyed, and therefore no ſubſequent Acknowledgment of the Lord will ever ſalve this ſore.

And this ſhall ſuffice for Forfeitures. I come now, in the laſt place, to ſhew what Acts amount to the Extinguiſhment of a Copy-hold.

SECT. LXII.

WHereſoever a Copy-hold is become not demiſable by Copy, either by the act of the Lord, by the act of the Law, or by the act of the Copy-holder himſelf, it is extinguiſhed for ever.

By the act of *the Lord*: As if a Copy-holder eſcheateth, and the Lord granteth away any Eſtate by Deed, this is an Extinguiſhment. So if he maketh a Feoffment upon Condition, and then entreth for breach of the Condition; yet the Copy-hold is extinguiſhed, becauſe once not demiſable. Co. 4. fo. 31.

But

But if the Lord keepeth the Copy-hold-Lands for never ſo many years, or granteth at will; this deſtroys not the Copy-hold, becauſe it continueth ever demiſable by Copy.

By the act of *the Law*: As if the Copy-hold eſcheated be extended upon a Statute or Recognizance acknowledged by the Lord, or if the Feme of the Lord hath this Land aſſigned unto her for her Dower; although theſe impediments be by the act of the Law, yet becauſe they are lawfull, the Land can never after be granted by Copy.

By the act of *the Copy-holder himſelf*: As if he accepteth a Leaſe for years at the Common Law, either mediate or immediate from the Lord of the Copy-hold; this is an abſolute Extinguiſhment.

But if he accepteth a Leaſe for years of the Manor, the Copy-holder by this hath not Continuance; but this is no Extinguiſhment, becauſe the Land continueth ſtill grantable by Copy.

If a Copy-holder with Licence make a Leaſe for years to a Stranger, or without Licence maketh a Leaſe for years to the Lord; the Copy-hold is not hereby extinguiſhed, and yet it is not demiſable by Copy.

So if a Copy-holder intermarrieth with a Feme Seignioreſſe; this is a Suſpenſion onely

onely of the Copy-hold, no Extinguiſhment.

So if the interruption be torcious, as the Lord be diſſeiſed, and this Diſſeiſor dieth ſeiſed; or if the Land be recovered by falſe Verdict, or erroneous Judgment, and after the Land is re-continued; it is not extinguiſhed, but may be granted arere by Copy: for *Non valet impedimentum quod de jure non ſortitur effectum; & quod contra Legem fit pro infecto habetur.*

And ſo I conclude with Copy-holders, wiſhing that there may ever be a perfect Union betwixt them and their Lords, that they may have a feeling of each others wrongs and injuries; that their ſo little Commonwealth, having all its Members knit together in compleat order, may flouriſh to the end.

FINIS.

FINIS.

A Supplement

By way of

ADDITIONS to and AMPLIFICATIONS of the foregoing TREATISE,

CONCERNING

COPY-HOLD and CUSTOMARY

ESTATES:

Wherein the Grounds laid down in the ſaid *Treatiſe* are made good and confirmed by ſeveral Reſolutions and Judgements given in the Courts of the Common Laws of *England* in divers Caſes.

LONDON,
Printed by *John Streater*, *James Fleſher*, and *Henry Twyford*, Aſſignes of *Richard Atkyns* and *Edward Atkyns*, Eſquires. 1668.

Cum Gratia & Privilegio Regiæ Majeſtatis.

THE INTRODUCTION.

THE Learned Authour of the beforegoing Book, intituled, *The Compleat Copy-holder*, having in a very compendious manner treated of the Original of *Manors* and how constituted; and of their *Demesn Lands*, as also of the several *Tenancies* thereof, and of the nature of the *Services*, *Qualities*, and *Courts* incident and belonging thereunto; and (amongst the rest) of *Copy-holders*, *Copy-holds* and *Customary*

Eſtates, and their *Tenures*, *Services* and *Cuſtomes*, diſtinguiſhing them from the other Tenures and Services; ſetting forth therein likewiſe the Antiquity and Original of *Copy-holds*, the *Services*, *Duties*, and other things incident to ſuch Tenure; with divers *Cuſtomes*, *Preſcriptions* and *Uſages*, claimed by ſuch *Copy-hold-Tenants*, together with the manner of *Grants* and *Eſtates* thereof, and how and in what manner they are either to be granted or accepted of: Now becauſe the drift of the Authour of the ſaid Book was (as I conceive) to ſpeak more particularly of *Copy-hold* and *Cuſtomary Eſtates* then of the other Tenures; and therefore the Authour of the ſaid Book hath therein laid down ſome general Grounds concerning the ſame, but hath not confirmed them either by *Judgments* or *Precedents* of the *Common Law*, which would

have more illuſtrated the ſame; and ſome things likewiſe concerning *Copy-holds* and *Cuſtomary Lands* and *Eſtates* have been omitted by the ſaid Authour worthy to be known by all Students and others whom the ſame may concern: therefore at the requeſt of divers perſons, by way of *Amplification* of what hath therein been formerly treated of by the ſaid Authour, and by way of *Addition* of what therein hath been omitted, I have added what hereafter followeth by way of a *Supplement* to the former Book; wherein I ſhall endeavour to contribute ſomewhat *de novo*, and to make good the former Grounds laid down in the ſaid Book, and what ſhall be added thereunto, by ſeveral *Reſolutions* and *Judgments* given in the Courts of the *Common Laws* of *England* in ſeveral Caſes concerning the ſame.

And therefore *Surrenders* (after a Grant thereof made) being one of the principal matters which do concern *Copy-holders* and their Estates, I shall first begin with them, and then proceed to other matters concerning *Copy-holders* and their *Customary Estates.*

Sect.

SECTION I.

What a Surrender of Copy-hold or Cuſtomary Eſtate is; to whom, and in what manner and place it is to be done; and who ſhall be ſaid ſuch a Tenant of a Copy-hold as may make ſuch a Surrender.

SUrrenders of Copy-hold-lands and Copy-holders are of two ſorts; *viz.* Surrenders Actual, and Surrenders in Law.

An Actual Surrender, according to the Definition of Mr. *Littleton*, and the beſt Deſcription of it, is a Copy-holder's yielding up of his Copy-hold-lands or Cuſtomary Eſtate into the hands of the Lord of the Manor, in the Court of the Manor, or unto his Bailiff, Reeve, or Steward, to ſuch Uſes and

for ſuch Eſtates as are particularly mentioned in the Surrender it ſelf, made by a Deed or Writing; or if it be by Word, in the preſence of the Lord and Tenants in the Court of the Manor. And yet it hath been a great doubt and Queſtion, whether of Copy-holds or Cuſtomary Eſtates, any words uſed to the Lord himſelf ſhall amount to make it a good Surrender.

Proofs.

Litt. 15. *b.* Book of Entries, 131. acc.

Vide Mr. *Littleton*, in his Chapter of Tenant by Copy, &c. *fol.* 15. *Ad hanc Curiam venit* A B, *& ſurſumreddidit in eadem Curia in manus Domini, &c. unum Meſſuagium, &c. ad uſum* C D. *& hæredum ſuorum, &c.*

But if the Surrender be made in Court into the hands of the Lord or his Steward, it muſt be to ſuch a perſon or his Uſe who is *in eſſe* and capable of ſuch a Surrender, or that may take Preſenty by force of the Surrender; otherwiſe ſuch Surrender, though it be an Actual Surrender made in the Court of the Manor to the Lord or Steward himſelf, is not good.

A Copy-holder in Fee ſurrendred his

his Copy-hold-lands into the hands of the Lord of the Manor, *Habendum* after his decease to the Use of an Infant *in Ventre sa mier*, and if the said Infant died within age, then to the Use of *J S* and his Heirs. In this Case these Points were Resolved. 1. If a Copy-holder in Fee doth surrender his Copy-hold-lands into the hands of the Lord, to the Use of himself and his Heirs, That in that Case, because the Limitation of the Use to him who had it before was void, the Surrender thereof to the Lord himself was also void. 2. That the Surrender made to the Infant *in Ventre sa mier* was not good as an immediate Surrender, and to take effect immediately, as the intention of the Surrenderer was it should, because it was of a Free-hold, which could not begin at a day to come.

H. 7 Jac. B. R. Simpson and *Sothern's* Case. *H. 17 Jac. in B. R. Bambridge* and *Whiton's* Case acc.

But yet *Quere*, If the Surrender be made into the hands of the Lord, to the Use of the right Heirs of the Surrenderer, if the Lands shall not continue in the hands of the Lord till the death of the Copy-holder who made the Surrender, for the Court doubted of it, *Pasc.* 30 *Eliz.* in *Allen* and *Palmer's* Case.

Vid. P. 30 Eliz. Allen and *Palmer's* Case. *Leon. part* 3. 108.

A Surrender being then by the Copy-

holder himself, in the Court of the Manor, to the Lord, of his Copy-hold or Customary Lands; if then, upon the very Act done, the Estate be in the Lord, or in the Surrenderer, or in whom it resteth, remaineth a Doubt. For Resolution thereof, I humbly conceive the Law to be, and so it hath been Resolved, That notwithstanding such a Surrender made, yet the Estate remaineth in the Copy-holder who surrendreth, and is not in the Lord, or in any other person whatsoever. But in case where the Copy-holder doth surrender his Copy-hold in the Court of the Manor to the Use of the Lord himself, (which he may doe) there, by such a Surrender, the Land is immediatly vested in the Lord without any other Act done or required, because the Lord cannot take a Surrender, as to make thereof an Admittance unto himself.

Vid. Cro. part 1. in *Erish* and *Rive's* Case, &c.

And to that purpose *Vide Erish* and *Rive's* Case, where it was Resolved, That if a Surrender be made by a Copy-holder of his Copy-hold-lands into the hands of the Steward of the Manor to the Use of the Steward himself, that Surrender is good without any farther Act, for the reason aforesaid.

Having

Having thus shewed what will be a good Surrender of Copy-hold or Customary Lands by an actual Surrender in the Court of the Lord of the Manor, I shall now consider

SECT. II.

Whether a Copy-hold may be said to be surrendred by any Act, Words, or Agreement, made betwixt the Lord and the Copy-holder, or by the Copy-holder with a Stranger made in the Court, in the Presence of the Lord or his Steward.

I Do conceive generally, that no Act or Words of the Copy-holder can pass his Copy-hold in such a manner, as that the same shall be accompted to amount to a good Surrender of the same. But yet it rests upon a Difference.

Vid. Leon. 1. part, 172. Pennuddock and Newman's Case.

Proofs.

If a Copy-holder bargains and sells his Copy-hold by Deed of Bargain and Sale enrolled, though it be to the Lord of the Manor himself, it is void, and shall not amount to a Surrender.

If

If Tenant for life of Lands at the Common Law agrees with his Leſſor, or him in the Reverſion, that he ſhall have his Intereſt in the Land for the Rent of 20 *s. per annum*; this Agreement will not amount to a Surrender of his Land by the Common Law. *A fortiori*, If a Copy-holder, or other Cuſtomary Tenant, ſhall ſay to his Lord, or other perſon in the Court of the Manor, I agree to ſurrender my Lands; theſe words will not be a preſent or an expreſs Surrender, nor will they amount to ſo much as a Relinquiſhing of his Eſtate: for in truth it is not any thing in preſent, but an Act to be done *in futuro*: Like unto the Caſe put by *Wray* Chief Juſtice; *A* ſeiſed of the Manor of *D* demiſeth the ſame Manor at will; that it is no Leaſe. No more in the other Caſe ſhall it be a Surrender, or a Relinquiſhing of his Copy-hold or Copy-hold-eſtate. But yet notwithſtanding it will be agreed that in ſome caſes an expreſs and particular Agreement made by a Copy-holder with the Lord of the Manor for or concerning his Copy-hold-lands will amount to a Surrender of the ſame.

Tr. 31 *Eliz. in B. R. Sweeper* and *Randall's Caſe, Lehm.* 1 *part*, 178.

The Caſe was, That the Lord of a Manor, pretending that a Copy-holder had

had forfeited his Copy-hold-lands, entred into a Communication with the Copy-holder concerning the ſame: Upon the Communication thereof had betwixt them, it was agreed, that the Copy-holder ſhould pay unto the Lord the ſumme of 10 *l.* which he paid accordingly; and that in conſideration thereof, the Copy-holder ſhould have Election, whether he would have the Land aſſured unto him by Copy or by Bill, for the life of him and his Wife, or *durante viduitate* of the Wife: who made his Election to have the Land by Bill. It was the opinion of the Juſtices in that Caſe, That this Agreement was a good Surrender of the Lands, and a good Eſtate thereupon veſted in the Wife for her life.

M. 32 Eliz. in C. B. Collam and Sir *Hugh Portman's* Caſe, *Leon.* 1 part, 191.

A Copy-holder in Fee came into the Court of the Lord of the Manor, and took a new Eſtate of his Copy-hold-lands from the Lord to himſelf for life, and afterwards to his Wife for life, and after to his Son for life. It was a Queſtion, whether this Act of the Copy-holder was the giving up and the relinquiſhing of his Eſtate of Inheritance in his Copy-hold, and did amount to a Surrender of his old Eſtate therein. It was agreed

M. 23 Jac. B. R. Berſfield and *Adams* Caſe.

Vid. 29 *Eliz.* Co. 2. part, *Lem's* Caſe.

agreed in this Caſe, That if a Copy-holder of Inheritance takes a Leaſe by Indenture for years of the Lord of his Copy-hold, that by that Act of his his Inheritance in his Copy-hold is gone and determined. But it ſeemed to be the better opinion of the Court, That although that this taking of a new Eſtate ſhall imply a Surrender, and be accounted as to ſome purpoſe to amount to a Surrender; yet in the judgment of Law it ſhall be but as a Surrender to his Uſe for life, and after to his Wife and Son for their ſeveral lives, and that ſtill the Inheritance of the Copy-hold remains in him. But *Quere* this Caſe. For that *H.* 36 *Eliz. in Co. B. Rot.* 2640. in *Adams* and *Shepheard's* Caſe, it ſeemeth to be adjudged to the contrary.

Vid. Colman and *Bedil's* Caſe, *Anderſon's* Reports 199. acc.

A Copy-holder ſaid to his Lord, that he would not hold his Land longer by Copy, but by a Bill under the Lord's hand for his life, who made him ſuch a Bill, which the Copy-holder accepted of. It was agreed by the Juſtices in that Caſe, That thereby his Copy-hold was determined.

SECT.

SECT. III.

Of Surrenders out of Court; and where Surrenders to the Steward, Deputy-ſteward, or into the hands of Tenants of the Manor, out of Court, ſhall be good, where not.

BY the general Cuſtome of the Realm a Copy-holder may ſurrender his Lands in the Court of the Lord of the Manor, or out of Court, to the Lord, by the hands of Tenants of the Manor: But a Surrender out of Court to the Lord, or by the hands of Tenants of the Manor, or of the Bailiff or Reeve, is not good without a ſpecial Cuſtome.

The Lord hath ſuch an abſolute Intereſt in his Manor, that he may hold a Court within his Manor at what time he pleaſeth: But he is not compellable by his Copy-holder to hold or call a Court to accept of a Surrender. But if he doth accept of ſuch a Surrender of his Copy-holder out of Court, the ſame is good, whether it be to his own Uſe, or to the Uſe of other perſons. And as the Lord may himſelf accept of a Surrender out of

of Court, ſo likewiſe may the Lord himſelf grant new Copies of the Lands out of Court, and ſuch Grants ſhall be good. But the Lord himſelf cannot hold his own Court for any of the purpoſes aforeſaid. But the Lord himſelf may give authority unto others to take Surrenders to the Uſe of others out of Court; and ſo may his Steward or Under-ſteward give Conditions to others to take the like Surrenders out of Court to others Uſes, which Conditions ſhall be in the nature of a *Dedimus poteſtatem*. And ſo it was Reſolved in a Caſe out of *Ireland*, referred to the Judges of *England*, to certifie their opinions therein; where the Caſe was, The Steward of the Court of a Manor in *Ireland*, being in *England*, ſent a Writ in the nature of a *Dedimus poteſtatem* to one who was in *Ireland*, to take a Surrender there of Copy-hold-lands: and the opinion of the Judges here, to whom the Caſe was referred to adviſe and certifie their opinions was, That ſuch a Surrender taken by *Dedimus* was good enough. But note, that in ſuch caſe it muſt be intended, that ſuch giving power to take a Surrender, if it be to be done, it muſt be alledged to be done either by Preſcription or Cuſtome:

ſtome: for that Surrenders generally taken out of Court muſt be by Cuſtome.

Proofs.

If the Under-ſteward hold a Court within the Manor, and grants Copies by Court-Roll, without the authority of the Lord or of the high Steward, the Grants are good. But contrary it is, if he doe it out of Court, as it ſeemeth. And there it is a *Quere*, if the high Steward out of Court may grant Lands by Copy. But it is clearly holden, that he cannot admit a Copy-holder upon a Surrender out of Court, without a ſpecial authority from the Lord ſo to doe. 2 E. 6. Br. *Tenant per Copie* 26.

A Depury-ſteward may take a Surrender out of Court, if the Office be granted to the Steward and his ſufficient Deputies, or to be exerciſed by him and his ſufficient Deputies; as it was Reſolved 19 *Eliz.* in the Court of *Common-Pleas.* 19 *Eliz. in Co. B.*

The Lord of a Manor may retain a Steward by Word, and ſuch a Retainer ſhall be good untill he be diſcharged, and ſuch a Steward may take a Surrender out of Court, as it is holden in *Coke* 4. part, in the Lady *Holcroft*'s Caſe. And ſo was it Reſolved *Tr.* 41 *Eliz.* in *Harris* and *Jaye*'s 8 *Eliz.* Dyer 248. *Co.* 4. part, *Holcroft*'s Caſe.

Tr. 31 *Eliz. C. B. Blagrave* and *Wood*'s Case, Godb. 142.

Faye's Case *in B. R.* But *Quære* of the first Point. For that *Tr.* 31 *Eliz. in Co. B.* in *Blagrave* and *Wood*'s Case, the opinion of the Justices was, That a Surrender to a Steward who was by word onely, out of Court, was not good.

M. 17 *Eliz. in C. B. by Dyer* and *Mounson.*

In 17 *Eliz. in Co. B.* it was said by *Dyer* and *Mounson*, That without a Prescription a Surrender of Copy-hold-land could not be out of Court, nor an Admittance out of Court, neither to the Lord himself nor to his Steward. But in divers places it is used by Custome so to be. And then and thereupon the doing of Fealty and the paying of the Lord's Fine shall be presented by the Homage to be done at the next Court. And all these things they said are to be done by Custome. And in that Case it was said by the Lord *Dyer*, That a Surrender out of Court might be to the Lord himself, to go by the way of Extinguishment.

A Copy-holder in Fee did, according to the Custome of the Manor, surrender his Copy-hold-lands into the hands of two Tenants; but the Surrender was to the Use of *J S*, to take effect immediately after his death. In this case it was Resolved, That as unto the Surrender into the hands

of

of two Tenants, that might be good, although it was out of Court, by Custome. But because in that Case the Surrender was unto the Use of *J. S.* to take effect immediately after the death of the Surrenderor, and a Free-hold cannot begin *in futuro* or at a day to come, by the Common-Law, and for that the Estates of Copy-holders shall be directed according to the Rules of the Common Law; for that cause onely the Surrender was holden to be void.

But although a Surrender out of Court may be good into the hands of Tenants of the Manor by Custome; yet untill such Surrender be presented by them in the Court of the Lord of the Manor, the Estate of the Lands doth remain in the Surrenderor, and nothing passeth thereby.

A Copy-holder in Fee did surrender into the hands of two Tenants, according to the Custome, to the Use of *A* and *B*, who thereupon entred into and upon the Lands, and paid the Rent to the Lord; but before any Court was kept for the Manor, the Tenants to whom the Surrender was made, as also the Copy-holder the Surrenderor, all of them died, and thereupon the Heir of the Copy-holder

M. 14 *Jac. B. R. Frosswell* and *Welshe's* Case, Bridgman 321.

Surrenderor entred upon the ſaid *A* and *B*, and made a Leaſe for years of the Lands, which Leaſe was warranted by the Cuſtome. In that Caſe it was Reſolved, That the Leaſe for years was well made, becauſe that before ſuch time that the Preſentment was made in Court of the Surrender, the Intereſt of the Copy-holder did remain in the Surrenderor, and his Right deſcended unto and upon his Heir, and he might take & receive the Rents and Profits of the Lands; for that no perſon can have a Copy-hold or a Copy-hold-Eſtate, but ſuch a perſon who comes into the ſame by the Cuſtome of the Manor, *viz.* by Admittance of the Lord, which in this Caſe *A* and *B* did not doe. But in that Caſe it was doubted by the Juſtices, but not Reſolved, Whether the Acceptance of the Rent by the Lord at the hands of the ſaid *A* and *B* did amount to an Admittance or not.

M. 9. *Jac. Cro.* 2. part, *Porter* and *Porter's* Caſe.

There were two Joynt-tenants in Fee of Lands which were holden by Copy. One of them, according to the Cuſtome, ſurrendred into the hands of two Tenants to the Uſe of his laſt Will, and afterwards he made his Will, and thereby deviſed the Lands. In that Caſe it was holden by

by the Juſtices, That becauſe the ſaid Surrender was preſented by the Tenants in the Court of the Lord, that the ſaid Surrender ſhould bind the Survivor; for that it ſhall have a relation to the firſt time of the Surrender. But if in that caſe the Copy-holder who made the Surrender had died before the ſame had been preſented, then the Copy-hold had ſurvived to the ſurviving Joynt-tenant.

Two Coparcenors, Copy-holders, were in poſſeſſion; the one did ſurrender her Reverſion in the Moyety after her deceaſe. It was adjudged a void Surrender, becauſe a Free-hold could not commence *in futuro*, as well of Copy-hold-lands as of Free-hold-lands. *P. 10 Jac. B. R. Godb. 141.*

A Copy-holder ſurrendred a Meſſuage and 20 Acres of Lands into the hands of two Tenants out of Court, to the Uſe of *J S* and his Heirs, upon Condition, that if he paid *J S* 100*l.* before ſuch a day, the Surrender to be void. Before the day of payment he ſurrendred one Acre, parcel of the 20 Acres, unto *J D* and his Heirs, and afterwards he performed the Condition by paying the 100*l.* and afterwards in Court he ſurrendred the ſaid Meſſuage and 20 Acres of Lands in- *M. 8 Jac. in B. R. Cro. 3. part, Burgoyne and Spurling's Caſe.*

to the hands of the Steward, to the Uſe of *J N* and his Heirs. It was found by the Jurours that the firſt Surrender made to *J S* was never preſented, but the two laſt Surrenders were preſented. In this Caſe it was Reſolved, That by the Conditional Surrender nothing paſſed, untill it was preſented; but the Intereſt, Right and Poſſeſſion remained in the Copy-holder who made the Surrender, ſo as he might transfer it to whom he thought good. For although it was a Surrender into the hands of Tenants, and ſo according to the manner of the Surrender the ſame was good by the Cuſtome; yet becauſe the ſaid Surrender into the hands of Tenants was but an Inchoation of the Caſe to whoſe Uſe the Surrender was made, which had no farther perfection or proſecution, but became void by the performance of the Condition, the firſt of the two laſt Surrenders preſented, *viz.* the Surrender to the Uſe of *J D* and his Heirs, ſtood good, and the laſt Surrender to the Uſe of *J N* and his Heirs took no effect.

Coke 9. part, *Comb's* Caſe.

A Copy-holder in Fee made a Letter of Attorney to two Tenants of the Manor, to ſurrender his Copy-hold out of Court

Court unto the Use of *J S* and his Heirs: They surrendred the same accordingly, and at the next Court brought in the Surrender into Court, (but no Custome was found to warrant such a Surrender.) Notwithstanding in that Case it was Resolved, 1. That it was a good Surrender, because he might doe it *de communi jure* without alledging any Custome. 2. When the Tenants shewed the same in Court, and the Authority which was given to make the Surrender, all which they had done was Resolved to be good, and legally done.

SECT. IV.

Where, although Surrenders are made to the Lord or to Tenants out of Court by Custome, yet nothing passeth out of the Copy-holder before Admittance: And what shall be a good Admittance in such case, what not.

ADmittance is the life and perfection of the Copy-holder's Estate, and before Admittance the Tenant is not a perfect Copy-holder.

Proofs.

M. 23 *Car. B. R. Baker and Denham's Case.*

The Custome of a Manor was, That a Copy-holder might surrender his Copy-hold out of Court to the Use of another; the party to whose Use it was, to be admitted at the next Court. Such a Surrender was made, but before the next Court *Cestuy que use* died, and so was not admitted. It was Resolved in this Case, That he was not a Copy-holder within the Custome; for by the Surrender before Admittance the Surrenderee hath no possession, and the Heir is in by Discent, and holds by the Copy of his Ancestor, and so the *Cestuy que use* is not a perfect nor compleat Copy-holder. And it may be compared to the Case where a man makes a Feoffment in Fee of Lands, and makes Livery within the View; it is no perfect Livery till he doth enter into the Lands, but the Feoffor may punish a Trespass there done in the interim, for it is but *inchoatum* untill he enter. And so it is in case of a Copy-holder; the Surrender is but *quasi inchoatum*, as before, till he be admitted to the Copy-hold, *Vid. Frosewell's* Case before.

In

In 26 *Eliz.* the Question was, Whether the Copy-holder might have an Action upon the Case against the Lord for not holding his Court, and not admitting of him to whom a Surrender was made according to the Custome of the Manor. It was Resolved in that Case, That the Copy-holder himself might have the Action. But in that Case it was Resolved, That he to whom the Surrender was made, untill Admittance, by force of the Surrender had nothing; it was onely an Act begun, and not perfected; and therefore in such case he could not maintain the Action of the Lord for not admitting of him.

26 *Eliz. Gallomay's* Case vouched in *Bulstr.* 3. part, 217.

A Surrender of a Copy-hold is like to the Induction into a Benefice: before Induction there is no Possession; so before Admittance there is no Possession.

A Copy-holder, according to the Custome, did surrender out of Court into the hands of Tenants to the Use of *J S* and his Heirs; which Surrender was delivered into the Court by the said Tenants and there presented; which was accepted of by the Steward of the Manor, and an Entry made thereof in the Court-Roll, and a Copy of the Surrender was

M. 12 *Jac. Robinson* and *Green's* Case, *Bridgman* 82, 83. *Bulstr.* 3. part, 238. acc.

delivered unto *J S*, and in the Copy it was, *viz. Competunt eſt per Homagium*, that the Surrender was to *J S* and his Heirs. It was the opinion of the Court in this Caſe, That none of theſe colourable things did imply a perfect Admittance to the Copy-hold. For 1. The Acceptance of the Preſentment by the Steward from the Homage was no more then what he was bounden to doe as being Judge of the Court. 2. The Entry of Attorn the Roll was but an Office of Duty, being but an Evidence for the Lord, as alſo for him to whoſe Uſe the Surrender was; and ſo was the delivery of the Copy to *J S*, the *Ceſtuy que uſe*. But none of theſe things did imply the Conſent or Will of the Lord, that the *Ceſtuy que uſe* ſhould be admitted or have the Lands according to the Surrender; and all theſe things together do not imply any Admittance, for all of them may be done, though no Admittance be in the caſe.

M. 6 Jac. in B. R. Wilſon and Weddall's Caſe, Telv. 144.

Note, It was Reſolved in the Court of *King's Bench*, That if a Surrender be of a Copy-hold to *J S*, it is of no effect untill he be admitted Tenant; and if before Admittance *J S* doth ſurrender the Land unto another, a Stranger, who is

ad-

admitted, yet nothing passeth to the Stranger by this Admittance of the Stranger.

SECT. V.

Where some things, and what things, may be done by the Copy-holder or his Heir before Admittance.

Proofs.

1. THE Heir of a Copy-holder may enter and have an Action of Trespass before Admittance. 2. A *Possessio Fratris* or *Sororis* may be of a Copy-hold before Admittance. 3. A Discent shall not bind the Heir of a Copy-holder. 4. He may surrender unto a Stranger before Admittance. *Co. 4. part, Clark and Penyfather's Case.*

A Copy-holder in Fee had Issue two Daughters by divers Women, and died seised; the Daughters entred, and took the Profits many years; and before Admittance, the eldest Daughter died without Issue, and afterwards the youngest Daughter was admitted to the whole Land, as sole Heir to the Father. In this Case it was holden, That the possession of the eldest Daughter, though before Ad- *Vid. 12 Eliz. Dyer 291.*

Admittance, ſhould make her Siſter, though of the half bloud, inheritable to the Land.

24 Eliz. in Co. B. Coke 4. part, 23. Brown's Caſe acc.

If a Copy-holder in Fee by Licence maketh a Leaſe for years, and the Leſſee entreth, the Copy-holder having a Son and a Daughter by one Woman, and a Son by another; the Land ſhall diſcend to the Daughter of the whole bloud, although that the Son died, and was not admitted to the Copy-hold as Heir to his Father. And that that ſhould be *Poſſeſſio Fratris* of a Copy-hold before Admittance.

40 Eliz. in B. R. Arnold and George's Caſe, Telv. 26. acc.

If a Copy-holder doth ſurrender to a Stranger, and the Steward will not admit him, and the Stranger enters, and holds the Land; if the Lord bring Treſpaſs againſt him before Admittance, he may plead Not guilty, and his Plea ſhall be good, and it ſhall be found againſt the Lord, becauſe he is *particeps criminis* to the Admittance, becauſe it ſhall be intended, that the Lord would not ſuffer the Steward to admit him to the Copy-hold.

Tr. 2 Jac. B. R. Joyner and Lambert's Caſe, Cro. 2. part, 36.

A Copy-hold was ſeized by the Lord of the Manor, and he granted it to another in Fee, who died, and his Heir was admitted; then the firſt Copy-holder di-

ed,

ed, and his Heir entred, and surrendred unto a Stranger in Fee. It was Resolved in that Case, That the Entry of the Heir was lawfull, though he was not admitted to the Copy-hold-estate, and the Discent of the Land to the Heir of the Grantee of the Lord should not bind him. And farther it was Resolved in that Case, That the Heir of the Copy-holder being in the Land, his Surrender of the Land unto a Stranger was good before his Admittance.

SECT. VI.

Where the Lord is but an Instrument to convey the Copy-hold by Admittance onely, and that the Surrenderee is in by the Copy-holder, and not by the Lord.

ALthough generally (as before is said) a Copy-holder cannot enter and have Seisin of the Land without the Admittance of the Lord, no more then a Parson or Prebend can have Seisin, or be full Incumbent, till the Arch-deacon hath inducted him, or the Dean and Chapter enstalled him: yet the Lord is but an Instrument used for the settling of the Copy-hol-

Vide Plow. Com. 421. in *Hare* and *Bickley's* Case.

py-holder in his Copy-hold, and to transfer the Land *ſecundùm formam & effectum Surſumreddidionis*, and the Eſtate, Right and Intereſt in the Copy-hold doth not paſs as from the Lord; but upon the Admittance made by the Lord the Copy-holder is in by him who made the Surrender, and by the Cuſtome, and ſeiſed of the Copy-hold *ſecundùm Conſuetudinem Manerii*, &c.

Proofs.

M. 40 Eliz. B.R. Pay and Browne's Caſe, Cro. 1. part.

The Lord of a Manor demiſed Copy-hold of Inheritance to *A*, upon Condition that he ſhould pay to *B* 20*s.* yearly during his Minority, and 100*l.* at his full age. *A* paid not the 20*s.* but ſurrendred the Land to the Uſe of *P* and his Heirs. The Lord admits him. *B* attains his full age, and the 100*l.* is not paid. The Lord enters for the Condition broken, and grants the Land by Copy to *B*. *P* enters upon him. It was holden in this Caſe, That his Entrie was lawfull, for that he to whoſe Uſe the Surrender was made comes in by him who ſurrendred, and not by the Lord.

A Copy-holder in Fee ſurrendred his

his Lands into the hands of the Lord by the hands of Tenants, according to the Custome, without expressing to whose Use it should be. At the next Court he was admitted *Habendum* to him and his Wife in tail. It was objected, That no Use being expressed, the Surrender was void, and the Admittance not good, to pass an Estate to the Wife not being named in the Premisses, but in the *Habendum* onely. It was Resolved, 1. The Surrender was good, for it shall be intended, that the Surrender generally made was to such Use as was specified in the Admittance; and the Lord was onely as an Instrument put in trust to convey the Estate, and make such Admittance as he who surrendred would have him to make. 2. That the Wife should take by the Admittance, though she was not named in the Premisses, but in the *Habendum* onely.

Tr. 15 Jac. B.R. Brook's Case, Poph. 125.

If a Copy-holder surrendreth his Lands to the Use of *J S*, the Lord hath but a Customary power to make the Admittance *secundùm effectum & formam Sursumredditionis*. And if in such case the Lord grants the Land to *J S* and a Stranger, all shall enure to *J S*, and nothing to the Stranger. And if the Copy-holder doth

33 Eliz. Co. 4. part, Westwick's Case.

doth surrender his Lands without a Condition, if the Lord doth admit the Tenant upon a Condition, the Condition is void; for that after the Admittance the Surrenderee is in by him who made the Surrender, and not by the Lord.

28 Eliz. Co. 4. part, Bunting's Case.

A Copy-holder surrenders to the Use of another; the Lord admits him to hold to him and his Heirs: yet he shall have but an Estate for life, for that after the Admittance he is in by him who made the Surrender, and not by the Lord.

Coke 8. part, in Swayne's Case.

The Custome of the Manor was, That a Copy-holder for life might take Timber to repair; The King made a Lease of the Manor, excepting Woods and Underwoods and Trees: The Lessee for years of the Manor grants a Copy-hold upon which were Timber-trees to another for life, who cuts Timber to repair. It was Resolved, That in this Case, notwithstanding the Severance and Exception, the Grantee should have the Trees, for that the Estate of the Copy-holder who comes in by a voluntary Grant is in by the Custome, and the Lord is but an Instrument to make the Grant.

Co. 4. part, in Tooverer's Case.

When a Copy-holder surrenders to the Use of another, and the Lord admits him;

now

now he who is admitted is in by him who makes the Surrender. For in a Plaint in the nature of a Writ of Entry in the *Per*, he shall be supposed to be in the *Per* by him who made the Surrender, because the Lord is but an Instrument to make the Admittance; and he who is admitted shall not be subject to any Charges or Incumbrances of the Lord, for the Lord hath but a Customary power to make the Admittance *secundùm effectum sursumredditionis*, as before is said.

A Copy-holder surrenders to the Use of *J S*; the Lord refuseth to admit him: he cannot enter, unless there be an especial Custome to warrant it; but if there be, then he may enter. *M.* 37 *Eliz. Cro.* I. part, *Berry* and *Green's* Case.

SECT. VII.

Where the Admittance of the particular Tenant shall be the Admittance of him in the Remainder.

Proofs.

A Copy-holder in Fee by Licence made a Lease for years; the Lessee enters; the Copy-holder, having Issue a Son and a Daughter by one Woman, and a Son by another, *M.* 24 *Eliz. Co.* 4. part, *Browne's* Case.

another, died; the eldest Son died before Admittance. In this Case it was Resolved, (amongst other things) That the Admittance of Tenant for life is the Admittance of him in the Remainder, but not to bar the Lord of his Fine, which he ought to have by the Custome.

P. 36 Eliz. B. R. Coke 4. part, Fitch and Huckley's Case.

The Father a Copy-holder in Fee made a Surrender to the Use of himself for life, and after to the Use of his Son for life, and after to the Use of his last Will. The Father was admitted, and died: The Lord pretending a Forfeiture entred, and granted the Copy-hold to a Stranger. Resolved, That the Admittance of the Tenant for life was the Admittance of him in the Remainder; and then the Land could not vest in the Grantee of the Lord.

Tr. 36 Eliz. B. R. Deal and Higden's Case, Moore 358.

It was Resolved by the Justices, That the Admittance of Tenant for life of a Copy-hold is the Admittance of him in the Remainder, because he is to pay his Fine which is intire, and no Fine is due to be paid by him in the Remainder to the Lord: but otherwise it is of him in the Reversion.

M. 18 Eliz. B. R. Cro. 2. part, Gippin and Banyt's Case.

A Copy-holder surrendred to the Use of one for life, the Remainder to another in

in Fee: Tenant for life was admitted: He in the Remainder surrendred to the Use of *J S*; which Surrender the Lord accepted of, and admitted him, and then the Tenant for life died. It was holden in this Case, That the Heir of *J S* should have the Land, for that the Admittance of the Tenant for life was the Admittance of him in the Remainder; and also because the Acceptance of the Lord was *quasi* an Admittance to him in the Remainder.

A Copy-holder in Fee surrendred to the Use of his Wife for life, the Remainder to his younger Son in Fee, and died: The Wife was admitted, but the younger Son refused to be admitted during the life of his Mother, but afterwards, without other Admittance, he surrendred to the Use of *J S*. It was Resolved, That the Admittance of the Mother Tenant for life was the Admittance of the younger Son in the Remainder, because they made but one Estate. *Tr. 2 Jac. B. R. Aumcelme* and *Aumcelme's* Case, *Cro.* 2. part.

A Copy-holder had Issue 3 Sons, *B*, *C*, and *D*, and surrendred to the Use of his last Will, and thereby devised the same to his Wife for life, the Remainder to *C* and the Heirs of his body: The Wife di- *Hil.* 31 *Eliz. B. R. Ballein* and *Grauni's* Case, *Leon.* 1 part, 174.

ed after Admittance, and the Lord granted the Copy-hold to *D* in Fee, who surrendred to the Use of *J S* for life, and after died without Issue: *B* the eldest Son entred. It was adjudged, That his Entry was lawfull, and that Admittance of him was not necessary; for that if a Copy-holder surrendreth to the Use of one for life, he in the Reversion or Remainder may enter without any new Admittance.

SECT. VIII.

By what and whose Act, either of the Law, of the Copy-holder himself, or of the Lord, severally or all together, the Copy-hold-land or Estate shall be gone, determined, or extinguished; and where suspended onely.

HAving in the Sections before declared where a Surrender and Admittance thereupon, either by the Lord or his Steward in Court, or to them, or into the hands of Tenants out of Court, shall be good, and where not: Let us now look upon this Division, and see in what case the Copy-hold or Copy-holder's Estate

ſtate or Intereſt ſhall be ſaid to be gone, determined, or extinguiſhed; and by what and whoſe Act it was or may be determined. Firſt, It may be determined by the Act of the Lord himſelf. 2. By the Act of the Copy-holder. 3. By Acts of them both joyned together. And laſtly, by the Act of the Law. All which will evidently appear by the Judgments, Reſolutions and Precedents after enſuing.

Proofs.

The Lord by his Act cannot, without the concurrent Act of the Copy-holder himſelf, determine the Eſtate and Intereſt which the Copy-holder hath in his Copy-hold. And therefore the Severance of the Free-hold and Inheritance of the Land holden by Copy of Court-Roll (being done by the Act of the Lord) doth not determine the Copy-holder's Eſtate, or extinguiſh the Copy-hold. For although that the Eſtate of the Copy-holder be but an Eſtate at will, *viz. ad voluntatem Domini ſecundùm Conſuetudinem Manerii*; yet Cuſtome hath ſo eſtabliſhed the Eſtate of the Copy-holder, that he is not removeable at the will

Co. 2. part, 17. in *Lane's* Caſe.

Co. 4. part, 21. *in* Brown's Caſe.

will of the Lord, ſo long as he performs the Cuſtomes and Services.

If a Copy-holder will joyn with the Lord in a Deed of Feoffment of the Manor, there, by that Act of them both, the Copy-hold is extinct; as it was ſaid by the Lord *Anderſon* Chief Juſtice, *P. 24 Eliz. in Co. B.*

Vid. Cro. 1. part, 5. acc. A Feme-ſole was Lady of a Manor, to which were divers Copy-holders: One of the Copy-holders did intermarry with the Seignioreſs of the Manor. It was the opinion of the Juſtices, That the Intermarriage was onely a Suſpenſion of the Copy-hold, and not an Extinguiſhment of it. But afterwards they joyned in ſuffering a common Recovery of the Land; and upon that their Act it was Reſolved, that the Copy-hold was extinguiſhed.

H. 26 Eliz. in Co. B. Cro. 1. part, Stockbridge's Caſe. Husband and Wife Copy-holders in Fee to them and their Heirs: The Husband for Money obtained an Eſtate of Free-hold to him and his Wife, and the Heirs of their bodies. It was Reſolved in that Caſe, That by the Acceptance of the new Eſtate the Copy-hold was determined.

M. 29 Eliz. in C. B. Godb. 101. If a Copy-holder doth ſurrender to him who hath a Leaſe for years of the Ma-

Manor to the Use of the same Lessee, by that Act of his the Copy-hold-estate is extinct.

The Lord of a Manor sold the Free-hold of a Copy-hold unto another, and so it was divided from the Manor; and afterwards the Copy-holder did release to the Purchasor. It was the opinion of the Justices, That by this Release the Copy-hold was gone and extinct. But in that Case it was said, That if a Copy-holder be ousted, so as the Lord of the Manor is disseised, and the Copy-holder releaseth to the Disseisor, *Nihil operatur* by such Release. *P. 30 Eliz. B. R. Leon. 1. part, 102. Wakefield's Case.*

A Copy-holder had common by Usage in the Wastes of the Lord as to his Messuage and Lands belonging: The Copy-hold comes to the Lord, who after grants the same to the Copy-holder *cum pertinentiis*. In this Case it was holden, That these words, *viz.* (*cum pertinentiis*) could not create a new Common, and the Common first holden was by Custome annexed to the Customary Estate, and was absolutely extinguished.

If there be Lessee for life, the Remainder for life of a Copy-hold, and the first Tenant for life purchaseth the Free-hold *M. 9 Jac. in C. B. adjudge. acc.*

of the Copy-hold, and afterwards levieth a Fine thereof, and five years paſs: It was adjudged, That in that Caſe by the Fine levied the Copy-hold was not gone nor deſtroyed, and that this Fine was not a Bar to him who was in Remainder in life of the Copy-hold.

P. 8 Jac. in Co. B. Moore and Rideval's Caſe.

There was Tenant for life of a Copy-hold: The Lord granted the Reverſion of the Copy-hold after the determination of the particular Eſtate to another for 20 years; Afterwards the Copy-holder, who was Tenant for life, by Deed made a Leaſe for life of his Copy-hold, and made Livery, which was a Forfeiture of his Copy-hold-eſtate. It was the opinion of the Juſtices in that Caſe, That this Act of the Tenant for life was not a Determination or an Extinguiſhment of the Copy-hold: For although it was a Determination of the particular Eſtate of the Copy-holder, and that he in the Remainder might enter; yet the Land remained Copy-hold as it was before.

3 Jac. in B. R. Laſtmer and Averie's Caſe, Cro. 2. part.

The Cuſtome of a Manor is, That if a Copy-holder in Fee dieth ſeiſed, his Wife ſhall hold the Land during her life as Free-Bench: The Lord enfeoffeth the Copy-holder of the Land. It was adjudg-

judged, That ſhe ſhould not hold the Land for her life as Free-Bench, but it was gone by the Purchaſe. Contrary, if the Lord had infeoffed a Stranger of the Land.

C purchaſed a Copy-hold from *A* Lord of the Manor, to him and his Wife and their Child for their lives: Afterwards *A* by Indenture granted the Freehold to *B* for life, rendring Rent, and made Livery: And afterwards *A* levied a Fine *ſur Conuſans de droit*, &c. to *C* of the ſame Lands, who afterwards accepted of the Rent from *B*. It was holden in that Caſe, That by the Acceptance of the Rent from *B* the Copy-hold of *C* was deſtroyed and determined. *Vid.* 30 H. 8. Dyer, acc.

Note, If a Copy-holder takes a Leaſe for years of his Copy-hold-lands, the Copy-hold is determined: and ſo it is, if the Lord leaſeth a Copy-hold for years which is eſcheated, the Copy-hold is determined. But if a Copy-holder purchaſeth the Manor, the Copy-hold is not determined, but ſuſpended, becauſe there is no Interruption, but it is able to be granted again, becauſe by the Cuſtome it ſufficeth that it hath been demiſed and demiſable. *M.* 15 & 16 *Eliz. in Ca.* B.

SECT. IX.

Of Forfeitures of Copy-holds and Copy-hold-eſtates; and what Acts or things done by the Copy-holder ſhall amount unto or be adjudged a Forfeiture of the Copy-holder's Eſtate, what not.

THE general Grounds of Forfeitures of Copy-holds, or of their Eſtates, are declared in the former part of this Treatiſe, unto which I ſhall refer you. That which I ſhall now ſay is but by way of Amplification of thoſe Grounds, with ſome Judgments and Authorities in ſeveral Caſes upon ſundry differences. All Forfeitures may be reduced unto theſe Heads: Either voluntary Acts done to the prejudice of the Lord, or negligent or wilfull refuſall to doe and pay his Duties and Services to the Lord, which by the Laws and Cuſtomes of the Manor he ought to doe and perform.

Proofs.

Coke 4. par. Murrel's Caſe. A Copy-holder makes a Leaſe either for life or years of his Copy-hold-lands, which

which is not warranted by the Custome of the Manor: now although such Lease shall be a good Lease as betwixt the Copy-holder and his Lessee, and he shall not avoid his own Lease; yet as unto the Lord it is a Forfeiture of the Copy-hold and of his Estate, and the Lord shall take advantage of such Forfeiture, and may enter upon the Lands leased.

So if a Copy-holder makes a Lease of his Copy-hold for 3 years by word, to begin at *Michaelmas* or at a day to come; although it is a good Lease as betwixt the parties to it, yet it is a Forfeiture of the Copy-hold to the Lord; and so it was holden *Hil.* 37 *Eliz.* in *East* and *Harding*'s Case. *H.* 37 *Eliz. East* and *Harding*'s Case.

A Copy-holder of a Manor made a Lease of his Free-hold-lands for 10 years, and, to avoid a Forfeiture, made a Lease of his Copy-hold-lands for one year; but covenanted with his Lessee, that he should enjoy the Copy-hold-lands *de anno in annum*, during the 10 years. It was the opinion of the Justices in this Case, That because this Demise of the Copy-holder was but for one year, and so warranted both by Law and Custome, and it was but onely a Covenant on the part of the Lessee that he *P.* 10 *Jac.* in *Ch. B.* the Lady *Mountague*'s Case, *Cro.* 2. part, acc.

he ſhould hold it for a longer time, that this was no Forfeiture, although the Lord pretended the ſame to be a Forfeiture.

M. 27 Eliz. in Co. B. by Anderſon. Moore 184.

The Lord licenſed his Copy-holder to make a Leaſe of his Copy-hold-lands for 21 years, to begin at *Michaelmas* following: The Copy-holder by Indenture made a Leaſe accordingly; but afterwards, before *Michaelmas*, he made another Leaſe by Indenture to another perſon, to begin at *Michaelmas* following. It was the opinion of the Lord *Anderſon* Chief Juſtice, *Mich. 27 Eliz. in Co. B.* That the making of this ſecond Leaſe, being without the Licence of the Lord, was a Forfeiture of his Copy-hold.

M. 15 Jac. in B. R. Worlidge and Bamburie's Caſe, Cro. 2. part.

A Copy-holder for life hath Licence of the Lord to make a Leaſe for 3 years, if he ſo long live, and he makes a Leaſe for 3 years without ſuch Limitation. It was holden to be no Forfeiture of his Eſtate in the Copy-hold, becauſe the Law makes ſuch a Limitation to the Eſtate which he makes, that it ſhall continue but during his life. But if he had been a Copy-holder in Fee, it had been a Forfeiture of his Eſtate to have made ſuch an abſolute Leaſe, becauſe he had done more

then

then he was licenſed to doe by the Law. And ſo it was adjudged in *Hall* and *Arrowſmith's* Caſe, which ſee in *Popham's* Reports, 185.

If a Copy-holder without Licence of the Lord doth erect a new Houſe upon his Copy-hold-lands, ſome opinion hath been, That the ſame is a Forfeiture of his Eſtate. But I doubt much of that Caſe, becauſe the Act done is for the benefit and advantage of the Lord, and not to his Prejudice. *Quere* of it. *M.* 8 *Jac.* in *B. R. Ward's* Caſe.

SECT. X.

Where deniall or refuſall to pay his Rent, Fine, or to doe his other Cuſtomes and Services, ſhall be a Forfeiture of his Copy-hold and Copy-hold-eſtate, and where not.

Proofs.

A Copy-holder in Fee was ſeiſed of Land rendring Rent at *Michaelmas* and our *Lady-day*. The Lord at the laſt inſtant of the day of payment demanded the Rent upon the Land, and the Copy-holder was not there, nor any for him, to pay it. It was a Queſtion, if his Non-payment of the Rent was a Forfeiture of his *H.* 33 *Eliz. Criſpe* and *Fryer's* Caſe in *Moore*.

his Copy-hold or not. And the better opinion of the Court ſeemed to be, That it was a Forfeiture, becauſe the Copy-holder was to take peremptory notice of the day of payment of his Rent, and his not being there ſeemed to imply that it was a voluntary Denial, or Refuſal at the leaſt, of doing the ſame. But *Quere* of it; for it was Reſolved in another Caſe, *Tr.* 21 *Jac. in C. B.* That not payment of Rent, or of the Fine upon Admittance to his Copy-hold, was no Forfeiture of his Copy-hold-eſtate, without there was ſome expreſs verbal Denial of it, which there was not in this Caſe.

Tr. 21 *Jac. in Co. B.*

A Copy-holder ſeiſed by force of ſeveral Copies of *Black-acre* by the Rent of 4 *d*, *White-acre* by the Rent of 4 *d*, and *Green-acre* by the Rent of 6 *d*, denied the Rent of *Black-acre*. In that caſe it was holden to be a Forfeiture of that Acre, but no Forfeiture of the other two Acres, becauſe, although they were all in one hand, yet becauſe they were holden by ſeveral Rents, the Forfeiture of the one Acre cannot be the Forfeiture of the other two Acres.

M. 37 *Eliz. B. R. Tavernor* and Lord *Cromwel's* Caſe, *Cro.* 1. part.

No Fine is either due or payable to the

the Lord, but either upon a Discent, or upon an Admittance. But if such a Copy-holder upon his Admittance shall make an absolute Refusal to pay the Fine to the Lord, the same is a Forfeiture of his Copy-hold and of his Estate. But there such a Fine must be reasonable. For if the Fine assessed by the Lord be an unreasonable Fine, (of which the Judges shall determine) a Refusal or Denial of the Copy-holder to pay the same shall be no Forfeiture of his Estate or Copy-hold.

Vid. Coke 4. part, 28. in Sands Case.

Note, It was Resolved by the Justices, That if the Lord demandeth an unreasonable Fine of his Copy-holder, and he refuseth to pay it, it is no Forfeiture; otherwise where it is a reasonable Fine. If a Fine be certain, the Tenant is to bring it with him to the Court, and to pay it before Admittance; and if he be not ready to pay it, it is a Forfeiture, and so it was adjudged. But what shall be a reasonable Fine or an unreasonable Fine, ought to be determined *per arbitrium boni viri*; and the Court and Justices of it shall be Judges of the Reasonableness of the same, if it be pleaded that the Fine demanded by the Lord, or the

M. 43 Eliz. Dalton and Hamond's Case, Moore 622.

Diſtreſs for it, be unreaſonable or exceſſive.

M. 6 Jac. in C. B. Willowes and *Willowes* Caſe, *Coke* Select Caſes.

A Copy-holder ſeiſed of Copy-hold-lands of the yearly value of 53 *s.* 4 *d.* *per annum*, and no more, ſurrendred them into the hands of the Lord of the Manor to the Uſe of *J S* and his Heirs: The Cuſtome of the Manor was, That upon the Admiſſion of any perſon a reaſonable Fine ſhall be aſſeſſed by the Lord or his Steward to be paid. The Steward at the Court holden for the ſaid Manor aſſeſſed a Fine of 5 *l.* 6 *s.* 8 *d.* (the value of the Lands for 2 years) to be paid by *J S* for a Fine; which Fine being requeſted of him by the Lord to pay, he refuſed to pay the ſame; whereupon the Lord entred upon the Lands for a Forfeiture. In which Caſe theſe Points were Reſolved. 1. That if the Fine aſſeſſed had been reaſonable, yet a certain time was to be ſet, and a certain place where it ſhould be paid: for it ſhall not be intended that the Tenant hath ſufficient Money about him to pay a Fine which is uncertain to be aſſeſſed. 2. That the Fine aſſeſſed by the Steward was an unreaſonable Fine: and 3. That the Refuſal was no Forfeiture.

If

If the Fine of a Copy-holder be aſſeſſed by the Lord or his Steward, be the Fine reaſonable or unreaſonable, the Lord muſt demand the Fine of the Copy-holder before he can enter upon the Copy-hold for not payment thereof, and the Reaſonableneſſe or Unreaſonableneſſe thereof ſhall be adjudged by the Court.

H. 13 Jac. C.B. Denny and Lemon's Caſe, Hob. 135. Co. 11. part, Godfrie's Caſe acc.

Lands being Cuſtomary Lands, and by the Cuſtome diſcendable to the younger Son, the Father died, the younger Son being of the age of 2 years; Thirty years incurred after the death of the Father, and no Court had been holden for the Lord of the Manor: But in the interim the younger Son had made a Leaſe of the Lands to a Stranger; and after, at the next Court holden for the Manor, he came into Court and prayed to be admitted, but the Steward refuſed to admit him. It was holden in this Caſe, That the Leaſe made by him was good, and that there was no negligence in him to be admitted to the Copy-hold-eſtate; for that it was holden in this Caſe, That if a Copy-holder dieth, his Heir within age, he is not bound to come at any Court during his Nonage to pray Admittance, or to tender his Fine for the ſame; and

P. 30 Eliz. B.R. Anmory and Eves Caſe, Leon. 1 part, 109.

if

if the death of the Anceſtor be not preſented, nor Proclamations made that the Heir come in to take up the Land and pay his Fine, the Heir ſhall not forfeit his Land for ſuch neglect, although he be of full age.

4 Eliz. Dyer 211. If the Homagers in a Court-Baron being Copy-holders do refuſe to make their Preſentments, it is a Forfeiture of their Copy-holds: and ſo it was Reſolved to be by both the Chief Juſtices in the *Star-Chamber* in the Earl of *Arundel's* Caſe.

H. 13 Jac. B. R. Belfield and Adams Caſe, Bulſtr. 3. part, 81. A Copy-holder came not to the Lord's Court of the Manor to doe his Suit and Service by the ſpace of 3 years together. The Queſtion was, if it was a ſufficient cauſe of Forfeiture of his Copy-hold. It was ſaid by the Court, That it was no cauſe of Forfeiture, if a Warning be not given by the Lord of the time of his Court to be holden, and notice thereof given to the Copy-holder himſelf; and the withdrawing of his Suit by a Copy-holder is onely ſueable: but if he doth deny to doe his Suit and Service, then it is a Forfeiture of his Copy-hold: and ſo was it adjudged M. 14 Jac. in B. R. in *Hammond* and *Winibank's* Caſe.

Sum-

Summons was given at the Church-door for a Copy-holder to appear at the Lord's Court, and doe his Suit and Service; upon which Summons he did not appear. The Doubt was, if it was a cause of Forfeiture of his Copy-hold. It was the opinion of the whole Court, That it was no cause of Forfeiture of his Copy-hold, because that it was not shewed that it was the Custome to make such Summons: and the Court said, That it were hard to make it a Forfeiture, because perhaps the Copy-holder had not Notice of it; and they held that in such case Notice must be given to the person, and his Refusall must be a wilfull Refusall.

H. 36 Eliz. in Co. B. Godb. 142.

Vid. M. 30 Eliz. C. B. Sir *John Bruanche's* Case, *Leon.* 1 part, 104. Where general Warning of a Copy-holder to appear at the Lord's Court given within the Parish shall be sufficient, where not.

The Custome of a Manor was, That if a Copy-holder died seised, his Wife should hold his Lands as her Free-Bench, and be admitted Tenant, and that the Son should not be admitted Tenant during the life of his Mother: and farther the Custome was, That if any Copy-holder committed Felony, and it were presented by the Homage, that the Lord might seize the Copy-hold as forfeit: The Copy-holder died; his Wife was admitted to her Free-Bench: The Son committed Felony; the Wife died. The Question

H. 25 Eliz. in B. R. Borneford and Sir *John Packington's* Case, *Leon.* 1. part, 1.

was, if the Lord might ſeize the Copy-hold as forfeit. It was objected, He could not, for that the Son was not Tenant at the time of the Forfeiture committed, and ſo the Lord could not then ſeize, and the Cuſtome ſhould be taken ſtrictly. But notwithſtanding it was Reſolved, That the Lord ſhould have the Land as forfeit, and that the Son was a Copy-holder within the Intent of the Cuſtome.

If Husband and Wife be Joynt-Copyholders of the purchace of the Husband; during the Coverture the Husband is attainted of Felony, and dieth: It is no Forfeiture of any part of the Copy-hold. But if the Purchace be made before the Coverture, then it is a Forfeiture of the moyety.

M. 8 Jac. in Scaccario, Godb. 269. The King being Lord of a Manor, a Copy-holder within the Manor made a Leaſe of his Copy-hold for 3 Lives; and the ſurviving Tenant for life continued the poſſeſſion of the Lands for 40 years. Though the making of ſuch a Leaſe for 3 Lives was in Law a Forfeiture of the Copy-hold; yet becauſe it did not appear upon the Endorſement of the Deed that Livery was made, it was holden, That the

the King could not take advantage of the Forfeiture.

If a Copy-holder doth bargain and sell his Copy-hold-lands by Deed indented and enrolled, it was Resolved, The same was no cause of Forfeiture of the Copy-hold of which the Lord can take advantage, because the Copy-hold did not pass by the Deed: and so it was said it was adjudged in *London*'s Case.

So, if a Copy-holder for life surrendreth to the Use of another in Fee, and besides that makes Livery of the Land; this is no Forfeiture of his Copy-hold, because the Estate passeth by the Surrender, and not by the Livery. 35 *Eliz. Bp. Lock's Case.*

If a Copy-holder for life cuts down Timber-trees, it is a Forfeiture of his Copy-hold: and so it was adjudged in *Belfield* and *Adams* Case. But if a Copyholder makes a Lease for years, and the Lessee cuts down Timber-trees, or commits other Waste upon the Copy-hold-lands, the Lord cannot enter upon the Land for a Forfeiture; but in such case the Lord is put to his Action upon the Case against the Wrong-doer.

SECT. XI.

Where the Act of the Lord, and what Act of his, ſhall diſpenſe with a Forfeiture made by his Copy-holder; where and what not.

Proofs.

paſc. 5 Jac. Cro. 2. part, Mantlie and Willington's Caſe.

A Copy-holder commits Waſte, and after the Waſte done, the Lord accepts of the Rent from the hands of the Copy-holder. *Quere* if it ſhall bar him to enter for the Forfeiture. It is a *Quere* not Reſolved.

P. 5 Eliz. Moore 49.

If Lands be demiſable to two by Copy for life *ſucceſſivè*, and the Cuſtome of the Manor is, that they may not cut Trees: if the firſt of them cutteth down Trees, it is a Forfeiture both of the Eſtate of the preſent Tenant for life, and of the Eſtate of the other in Remainder over.

If a Copy-holder levies a Fine, makes a Feoffment, or ſuffers a common Recovery which deſtroys the Eſtate: in ſuch caſe no Acceptance of the Rent, or Act done by the Lord, ſhall be available to make the Eſtate again good. But where the Cuſtome of the Manor onely is broken;

ken; as if the Copy-holder makes a Lease of his Copy-hold-lands for more years then one year, or denies to pay his Rent, or denies to be sworn of the Homage, or commits Waste: there his Estate may be afterwards confirmed, and there and in such case the Acceptance of the Rent by the Lord will amount to a Confirmation of the first Estate.

In some cases, where an Estate of a Copy-holder is forfeited by Law, yet by Custome, and the Act of the Lord in his Court of the Manor, the Forfeiture may be mitigated, and the Land shall not be utterly forfeited or destroyed. As where the Custome is, That for Waste Copy-hold shall be forfeited, a Custome for to amerce the Tenant for the Waste done, and to distrain for the Amercement, will be a good Custome to mitigate the Forfeiture of the Copy-hold.

The Custome of the Manor where Copy-hold-tenements were demisable for lives was, That if any such Copy-holder suffered his Messuage to be ruined for want of Repairing, or by committing of Waste, if the same was presented by the Homage, the Lord used to distrain the Cattel as well of the Copy-

17 *Car. in B. R. Thorne and Tyler's Case.*

holder himſelf as of his Under-tenant levant and couchant upon the Lands for the ſaid Amercement. It was objected, That the Cuſtome was not good, for that it was an unreaſonable Cuſtome, that the Under-tenant ſhould be puniſhed for the offence of the Copy-holder, for the Under-tenant is a Stranger to the Cuſtome, and Cuſtomes ſhould be taken ſtrictly. But it was Reſolved that the Cuſtome was good; For by the Law, the ſuffering of the Copy-hold Meſſuage to fall to ruine, or to be waſted, was a Forfeiture of the Copy-hold, and the Cuſtome did abridge and mitigate the Forfeiture, and the Under-tenant for a year was a Tenant to the Lord, and diſtrainable for the Rents and Services, and the Charge lies upon the Land, and not upon the perſon; and therefore it was Adjudged, That the Cuſtome was good, and the Amercement lawfull, and the Diſtreſs of the Cattel of the Under-tenant levant upon the Land was lawfull, all of them being by the Act of the Lord in his Court, and by the Cuſtome of the Manor, in mitigation of the Forfeiture of the Land, and ſo for the good of the Copy-holder.

SECT.

SECT. XII.

Whether Copy-hold-lands be within the Statute of Westm. 2. *and may be entailed, or not; and where and by what Acts the Issues in tail may be barred; and what shall be a Discontinuance of the Estate, what not.*

WHether Copy-hold-lands are within the Statute of *West.* 2. *cap.* 1. *de Donis, &c.* or may be entailed, hath been much controverted, and many Judgments and Resolutions have been on both sides; and it seemeth to be a Point not fully agreed upon at this day. I shall therefore make some little mention what hath been said on either side, and leave it to the judgement of others. And first for the Affirmative part, That Copy-holds are within the said Statute, and may be entailed, I shall begin with Mr. *Littleton* himself. Tenant by Copy of Court-Roll is, saith he, where there is a Custome in a Manor time out of mind used, that certain Tenants within the said Manor have used to have Lands and Tene-

ments to them and their Heirs in Fee-simple or in Fee-tail; and in that Chapter he particularly sets forth the manner of Grants of such Estates, *viz.* *Ad hanc Curiam venit* A *de* B, *& surrendidit in manus Domini, &c. unum Messuagium, &c. ad usum* C *de* D, *& Hæredum suorum, vel Hæredum de corpore suo exeunt. Habendum sibi & Hæredibus de corpore suo exeunt. &c.* By which it appeareth to be the opinion of Mr. *Littleton*, that an Estate may and might be of Copy-hold-lands. And herewith agreeth the opinion of Mr. *Plowden* in his Commentaries in *Morgan* and *Manxell*'s Case. But note, that the opinion of Mr. *Littleton* is, That there must be a Custome of the Manor to enable such Estates of Copy-hold-lands.

It is said in *Coke* 3. part, in *Heydon*'s Case, That where an Act of Parliament doth alter the Service, Tenure or Interest of the Estate, either in prejudice of the Lord or of the Custome of the Manor, or in prejudice of the Tenants, there such an Act of Parliament doth not extend to Copy-holds. And therefore the Statute of *Westm.* 2. *de Donis*, because it extendeth to the Alteration of the Service

vice and Tenure of the Land, and is prejudicial to the Lord of the Manor, doth not extend to Copy-holds. But in that Caſe it is agreed, That by a ſpecial Cuſtome Lands might be entailed; for that it might be, that upon the creation of the Manors Lands were given by Lords of Manors to hold by their Tenants by particular Services and for particular Uſes; *viz.* to ſome to them and their Heirs in Fee-ſimple, to ſome others to hold to them and the Heirs of their bodies begotten, and to ſome others for particular Eſtates, as for life, *&c.* and ſuch Eſtates having continued in their Iſſues time out of mind, Cuſtome hath now enabled ſuch Eſtates to be of Copy-holds in tail: and although they have and enjoy ſuch their Eſtates, be it either Fee-ſimple or Fee-tail, yet it is but *ſecundùm Conſuetudinem Manerii*; and therefore and for theſe Reaſons and cauſes, although that Copy-hold be not or could not be entailed within the general words of the Statute *de Donis, &c.* yet by Cuſtome time out of mind uſed, they ſay that Copy-holds may be entailed.

36 *Eliz.* in the *King's Bench*, it was Adjudged, That where the Cuſtome of the

the Manor was, that Lands might be granted unto any in Fee-simple, in such case a Grant of Lands unto a man and the Heirs of his bodie was within the Custome: For a Custome which extendeth to the greater will extend to the lesser Estate.

M. 15 *Jac. Lee* and *Brown's* Case, *Poph.* 128.

Tenant in tail of a Copy-hold surrendred the same into the hands of the Lord, to the Use of *J S*, *&c.* In that Case 2 Questions did arise. 1. If Copy-holds were within the Statute *de Donis*, *&c.* 2. Whether the Tail might be cut off by a Surrender. The Court doubted of the first Point; but the better opinion seemed to be, That the Statute co-operating with the Custome, they might be entailed.

H. 31 *Eliz. B.R. Bullein* and *Graun.*'s Case, *Leon.* 1. part, 174.

A Copy-holder had Issue 3 Sons, *A*, *B*, and *C*, and surrendred his Copy-hold-lands to the Use of his last Will, and thereby declared the same to be to the Use of his Wife for life, the Remainder to *B* his second Son in tail, and afterwards to *A* in Fee. It was a Question in this Case, if *B* had a Fee-simple conditional in the Lands, or an Estate-tail. For if a conditional Fee, then a Remainder over of it could not be limited. It was the opinion of *Wray* Chief Justice, That it was an Estate-tail in *B*, and not a Fee con-

conditional, and that Cuſtomary Lands might be granted in tail.

A Surrender of Copy-hold-lands was made within the Manor of *Stevenſon*, to the Uſe of *J S* and the Heirs of his body; and after Iſſue, he ſurrendred the Lands unto another. It was agreed by all the Juſtices, That it was a Fee-ſimple conditional at the Common Law, and after Iſſue that he might alien the Lands. *H. 34 Eliz. B. R. rot. 998. Stanton and Barney's Caſe.*

A Copy-holder in Fee of the Manor of *Fairchilds* and *Preachers*, 3 *H.* 8. ſurrendred his Copy-hold-lands to the Uſe of his eldeſt Daughter for life, the Remainder to the eldeſt Son of the ſaid Daughter and the Heirs-males of his body, the Remainder to the right Heirs of *A* the Copy-holder in Fee. In this Caſe it was ſaid, That an Eſtate in Tail could not be of Copy-hold-lands. It was the opinion of *Fenner* and *Popham*, That by Equity of the Statute *de Donis* an Eſtate-tail might be of Copy-hold-lands, though not otherwiſe. *M. 36 Eliz. B. R. Gravenor and Brook's Caſe, Popb. 34.*

Now on the other ſide, That Copy-hold-lands cannot be entailed, nor are within the Statute *de Donis*, *&c.* ſee theſe Caſes and Reſolutions following.

H. 35 *Eliz. in Co. B.* it was Reſolved by

H. 35 Eliz. in Co. B. Pitts and Hatchley's Case.

by all the Juſtices, that Copy-holds were not within the Statute of *Weſtm. 2. de Donis*: For if they were within that Statute, then the Lord ſhould not enter nor take advantage of the Forfeiture of the Copy-hold for Felony, (the contrary of which was Reſolved in *Borneford* and Sir *John Packington*'s Caſe) but the Donor, and the Services ſhould be done to the Donor, and not to the Lord of the Manor; which is againſt the nature of a Copy-hold-Tenure.

Tr. 18 Jac. in Co. B. Royden and Moulſter's Caſe, Cro. 3. part. 32, 33. Godb. 367. acc.

The Caſe was, That a Copy-holder ſurrendred to the Uſe of one in Tail, there being no Cuſtome to warrant ſuch Surrender. In this Caſe the Queſtion was, whether a Copy-hold might be entailed within the Statute *de Donis*. It was holden by all the Juſtices, That it could not be entailed within the Statute, and that for divers cauſes. 1. Becauſe it is not within the Letter of the Statute, which ſpeaks onely *de Tenementis per Chartam datis*: and Copy-holds cannot paſs by Deed, but by Surrender onely, as is agreed on all ſides. 2. Becauſe they are not within the meaning of the Statute, becauſe that before 7 *E.* 4. 19. they were not of any account in Law, being onely Eſtates at will of the Lord

Lord *secundùm Consuetudinem Manerii.* 3. Because the said Statute *de Donis* provides onely against those who might make Disinherison by Fine or Recovery, which a Copy-holder there could not doe or make, because that then upon such Grants in Tail the Reversion should be left in themselves, which could not be, being to the prejudice of the Lord of the Manor. And also 4. because it would be very mischievous, because then there should be no means to dock or cut off such Entails, (common Recoveries and Fines not being then in use) unless there were a special Custome to that purpose.

Having thus declared and made mention of the several Cases and Resolutions in this much-controverted Point, Whether Copy-hold may be entailed within the said Statute *de Donis*, *&c.* I shall not deliver any absolute opinion upon the same, although I do much incline to the Affirmative part, being chiefly led thereunto by the opinion of Mr. *Littleton*, and by the Resolution in *Manxell*'s Case, and of my Lord *Coke* in *Heydon*'s Case, and a late Resolution in the said Point, 42 *Eliz.* in *Erish* and *Rives* Case, where it was adjudged in the Court of *Common Pleas*, upon

upon an Evidence given in a Cafe of Copy-hold-lands within the Manor of *Iſtleworth-Sion* in the County of *Middleſex*; where it was Reſolved, That no Eſtate-tail could be of a Copy-hold without a particular Cuſtome to warrant the ſame: but if there was ſuch a particular Cuſtome within the Manor to warrant ſuch Eſtates, then by the Cuſtome co-operating with the Statute (as before is expreſſed) Copy-hold-lands might be well entailed within the ſaid Statute.

Admitting then that by an eſpecial Cuſtome of the Manor Lands may be entailed; the next matter to be conſidered of is, By what and whoſe Acts the ſaid Eſtate ſhall be either diſcontinued or barred, and what ſhall amount to a Diſcontinuance or a Bar to the Iſſue in Tail of ſuch Eſtate.

13 *R.*2. ſits. Judgment 7. In 13 *R.* 2. ſits. Judgment 7. it is ſaid, That the Heir who is inheritable to the Copy-lands by Cuſtome may recover the ſame by Plaint in the Court of the Lord in the nature of an Aſſiſe of *Mort-dauncestor*, but he ſhall not have an Aſſiſe of *Novel Diſſeiſin*: And 15 *H.* 8. Tenant by Copy 24. The Heir of a Copy-holder Tenant in Tail ſhall recover

15 H.8. Tenant by Copy 24.

cover the Lands in a Formedon in the Discender.

The Custome of a Manor was, That Plaints in the Court of the Lord of the Manor have used to be in real Actions. A Recovery was by Plaint in the nature of a real Action against a Copy-holder being Tenant in Tail, and a Recovery thereupon had. It was holden in that Case, That the said Recovery shall be a Discontinuance to take away the Entry of the Heir in Tail, because such Plaints are warranted by the Custome, and it is an Incident which the Law annexeth to the Custome, That a Recovery shall be a Discontinuance. But *vide Tr.* 36 *Eliz. in B. R.* in *Deal* and *Rigden's* Case. If it had been a Surrender in Court, it had been no Discontinuance.

36 *Eliz. B. R. Deal and Rigden's Case, Moore* 358.

In 27 *Eliz.* in a Case concerning the Manor of *Northhall* in the County of *Essex*, That if Copy-hold-lands might be entailed within the Statute of *Westm.* 2. then a Custome of a Surrender of it should be a Bar or a Discontinuance of such Estate; for as the Estate might be created by Custome, so it might be discontinued by a Surrender by Custome. And *Tr.*

M. 9 *Car. in Co. B. Hill and Upchurche's Case, Brownlow* 121.

38 *E-*

38 *Eliz. Field* and *Eliot's* Caſe, A Surrender by Tenant in Tail of a Copy-holder in Fee makes a Diſcontinuance of it. But yet notwithſtanding thoſe Authorities and Caſes, I do conceive that a Surrender is no Diſcontinuance of a Copy-hold-eſtate in Tail.

H. 30 Eliz. B. R. Right and *Footeman's* Caſe, *Leon.* 1. part, 95.

If a man be ſeiſed of a Copy-hold in the right of his Wife, or be Tenant in Tail of a Copy-hold, and he doth ſurrender to the Uſe of another in Fee: It was holden in that Caſe, That the ſame doth not make any Diſcontinuance of the Eſtate of the Wife or of the Eſtate-tail, but that the Wife or the Iſſue in Tail may reſpectively enter into and upon the Land. And according to this it was adjudged in *Gravenor* and *Brook's* Caſe before mentioned in 36 *Eliz.*

37 Eliz. in C. B. Lane and *Hib's* Caſe.

Copy-hold-lands were entailed, and the Copy-holder ſurrendred the ſaid Lands to the Uſe of another man in Tail with divers Remainders over, and then he died. It was ſaid in this Caſe, That it was no Diſcontinuance of the Tail, but the Iſſue in Tail, notwithſtanding the Surrender, might enter. But it was ſaid in that Caſe, That if it were a Diſcontinuance, that in ſuch caſe a *Formedon* in the

the *Reverter* did not lie by the Tenant in Tail, because when a Copy-holder makes a Gift in Tail, he hath no Reversion, but a Possibility; and the Lord shall avow upon the Donee for the Rents and Services, and not upon the Donor.

In Trespass it was adjudged, That a Surrender by Tenant in Tail of a Copy-hold was not any Discontinuance of it, no more then a Surrender by Tenant for life to another in Fee was a Forfeiture. *H. 1 Jac. Oldcott's Case, Moore 753.*

If an Enfant Tenant in Tail surrendreth his Copy-hold-lands to the Use of a Stranger, who is admitted, the Enfant may enter at his full age, because it was not a Bar nor a Discontinuance. *H. 35 Eliz. Goales and Gran's Case adjudged acc.*

It is not to be disputed or questioned whether a Common Recovery of Lands at the Common Law with Voucher over and Warranty be a Bar of Lands entailed: It is universally received by all Learned in the Laws of the Realm to be a Bar of such an Estate, and the Inheritances of a great many persons of Quality and others do depend upon such Common Recoveries had and suffered. But then the Question hath been, whether a Common Recovery had and suffered in the Court

of the Lord of the Manor ſhall be a Bar of an Eſtate of Copy-hold-lands entailed: and for that, it will ſtand upon this difference, Where the Cuſtome of the Manor hath always been, that ſuch a Recovery there had ſhall be a Bar, where not. For without a ſpecial Cuſtome, I do conceive that by a Recovery had and ſuffered in the Court of the Lord of the Manor an Eſtate-tail of Copy-hold-lands cannot be barred: But where ſuch a Cuſtome is or hath been out of mind uſed, there I conceive that a common Recovery had and ſuffered in the Court of the Manor will bar an Eſtate in Tail of Copy-hold-lands. I ſhall onely put you two Judgments and Reſolutions to make good this difference, although many others may be alledged.

P. 37 Eliz. in B.R. Clun and Peaſe's Caſe, Cro. 1. part.

Upon a ſpecial Verdict in an Action of Treſpaſs it was found, That the Lands were Copy-hold demiſable in Tail, with the Remainder over in Tail: That Tenant in Tail in poſſeſſion ſuffered a Common Recovery with Voucher in the Court of the Manor of theſe Lands, and afterwards died: But there was not any Cuſtome found for ſuffering Recovery of ſuch Lands in the Court of the ſaid Manor.

not. It was holden by the whole Court in that Caſe, That the Recovery ſhould not bind the Tail but upon a Recompence in value, and in that caſe the Iſſue could not have Land in value: Alſo the Lord ſhould loſe his Fine, and the party to whoſe Uſe the Recovery was had ſhould hold the Lands without Admittance or Grant from the Lord, which is contrary to the nature of a Copy-hold.

The other Caſe was this. Land was demiſable in Tail by Cuſtome: A Copy-holder demiſed the Land in Tail by Copy: The Copy-holder ſuffered a Common Recovery in the Court of the Manor with Voucher and Warranty. The Court at the firſt doubted of it, becauſe a Warranty could not be annexed to ſuch an Eſtate in Tail. But yet afterwards it was Reſolved, That the Recovery there was a Bar of the Tail. And Note, for a Concluſion of this Point, That at this day, by the Cuſtomes of ſeveral Manors, Common Recoveries are had and ſuffered in the Courts of Lords of Manors for the docking and barring of Eſtate-tails of Copy-holds. And much inconvenience would enſue, both if Copy-holds at this day might not by Cuſtome

M. 37 Eliz. in B. R. Eylett and Lanes Caſe, Cro. 1. part.

ſtome be entailed, and likewiſe if by Cuſtome Common Recoveries had of Eſtate-tails with Voucher over in the Courts of Lords of Manors ſhould not thereby be docked and barred.

SECT. XIII.

What things are incident to a Copy-holder, and what he may take of common right without the Grant or Licence of the Lord: And what Acts upon the Land ſhall bind the Copy-holder, what not.

IF a Copy-holder according to the Cuſtome doth ſurrender into the hands of 2 Tenants to the Uſe of *J S* and his Heirs, and afterwards the Copy-holder dieth before the Preſentment be made of the Surrender by the Tenants, and the Lord before the Preſentment accepts of the Rent of *J S* generally, but not as a Copy-holder: the Heir of the Surrenderor may enter into and upon the Lands, and receive the Profits thereof to his own uſe, for that nothing veſteth in the Surrenderee before Admittance, and the Inheritance of the Copy-hold is in the Heir *quaſi* by Diſcent.

To

To have Common in the Wastes of the Lord is not a thing incident to his Copy-hold, but is by Prescription or Custome of the Manor. If therefore a Copy-holder purchaseth the Inheritance of the Land, the Interest of the Common being a thing intire is gone and determined. But if the Copy-holder doth surrender part of his Copy-hold-lands to the Use of another, who is admitted, yet his whole Common is not thereby determined, but he shall have Common still for the Lands not surrendred. *Pasch.* 45 *Eliz.* adjudge, acc.

A Copy-holder may take House-bote, Hedg-bote and Plough-bote upon his Copy-hold-lands of common right, as a thing incident to the Grant, if it be not restrained by a Custome, that the Copy-holder shall not take it but by Assignment of the Lord or his Bailiff. And if the Lord, where the Tenant hath such Botes, cuts down all the Woods and Under-woods which are standing and growing upon the Lands, to prevent the Copy-holder of his Botes, he may have an Action of Trespass against the Lord, as it was Resolved in *Heydon* and *Smith*'s Case, *Pasch.* 8 *Jac. in Co. B.* 9 H. 4. t. Waste 59. *Coke* Select Cases 68.

M. 8 Jac. B. R. The King and Stafferton's Case, Telv. 190, 191.

A Manor may be Copy-hold, and holden of another Manor by Copy of Court-Roll: and if such a Copy-hold-Manor be granted unto J. S. and his Heirs, J. S. may hold a Copy-Court within his said Manor without a special Grant of it; for that of common right a Court-Baron or a Copy-hold-Court is incident to every Manor.

P. 26 Eliz. C. B. Chaw and Dover's Case, Leon. 1. part, 16.

A Lord of a Manor grants a Copy-hold for 3 Lives, and afterwards takes a Wife: The 3 Lives end or determine: The Lord enters into the Manor, and keeps the Copy-hold-lands in his hands for a time, and then grants the Lands over again by Copy, and dieth: The Wife of the Lord enters, and claims Dower in it. In this Case it was Resolved, That the Copy-holder should hold the Lands discharged of the Dower, because the Copy-holder comes and is in the Lands by the Custome, which is paramount to the title of Dower.

P. 5 Eliz. by Dyer. Vide Moore 50.

A Copy-holder is seised of Lands at Common Law, and also of Lands holden by Copy of Court-Roll, and he by Indenture, without Licence of the Lord, makes one Lease of both Lands, rendring Rent. It was said by Dyer, That in such case the whole Rent

Rent is issuing out of the Lands at Common Law, because the Lease as to the Copy-hold-lands was utterly void.

If the Lord grants to his Copy-holder the Trees growing upon the Lands, and which shall after grow, with liberty to cut them down and carry them away; he may justifie the cutting of the Trees which are growing, and it shall not be a Forfeiture of his Copy-hold, because the Lord hath by his Grant dispensed with it: But he cannot cut down the Trees which shall there after grow, as it was said by *Plowden* and *Popham*. *P. 12 Eliz. in B. R. Moore 94.*

If a Copy-holder binds himself in a Statute, his Copy-hold-lands shall not be extended upon the said Statute, because the Copy-holder in the eye of the Law hath an Estate but *ad voluntatem Domini secundùm Consuetudinem Manerii*: But if a man be Tenant for life or years of a Manor, and a Copy-hold comes to his hands by Forfeiture or other determination, and he binds himself in a Statute; although the Copy-hold be after granted, yet it may be extended upon the Statute, because the Copy-hold was annexed to the Free-hold, and joyned with it in the hands of the Lord, when *Pasc. 12 Eliz. in B. R. adjudge. acc.*

the Statute was acknowledged and entred into.

M. 5 *Jac.* *Swayn* and *Beckett's* Case, *Moore* 812.

The Custome of a Manor was, That a Copy-holder might cut and lop Trees for Hedg-bote and other necessaries: The Queen made a Lease of the Manor to *J S*, with Exception of Trees: King *James* granted the Reversion to *J D* in Fee: The Assignees of the Term granted a Copy-hold to other for 3 Lives, *Habendum* to them *successivé*: The Copy-holder cut Trees. It was Resolved, That the Copy-holder was in by the Custome paramount the Exception, although he took his Estate after the Exception, and therefore might justifie the cutting of the Trees for the Hedg-bote and other necessaries.

35 *Eliz. Co.* 4. part, *Bullock* and *Dibley's* Case.

The Husband seised in Fee of Copy-hold-lands in the right of his Wife surrendred the same to another, who was admitted, and afterwards the Husband died. It was Adjudged that in this case the Wife might enter, and she should not be put to her *Cui in vita*.

M. 9 *Jac.* *in Co. B.* adjudge, acc.

If there be Lessee for life, the Remainder for life, of a Copy-hold, and the first Tenant for life doth purchase the Free-hold of the Copy-hold, and levies a Fine thereof,

thereof, and 5 years pass: it was Adjudged, That this Fine should bar him in the Remainder of his Copy-hold.

SECT. XIV.

Where the Lord of the Manor shall be Chancellour in his own Court, to determine the Differences which arise betwixt Copy-holders.

A Copy-holder doth surrender his Copy-hold-lands to *A*, to hold the Lands till he hath levied the summe of 100*l.* upon trust that afterwards he shall surrender to the Use of *B*: *A* levies the money, and being required to make the surrender to *B*, he refuseth to doe it; whereupon *B* exhibits his Bill to the Lord in the Court of the Manor: The Lord there makes a Decree, that *A* make the Surrender to *B*, which he again refuseth to doe; and thereupon the Lord seizeth the Lands, and afterwards admits *B* to the same. It was the opinion of the whole Court in this Case, That both the Seizure of the Lord and his Admittance of *B* were lawfull, because the Lord in such Cases of Equity to execute Trusts

H. 25 Eliz. in B. R. Leon. 1. part, 2.

is Chancellour in his own Court.

Vid. 14 H. 4. 34. If a falſe Judgment be given in a Court-Baron by the Steward againſt a Copy-holder, the Copy-holder in ſuch caſe ſhall not have either a Writ of Errour or a Writ of Falſe Judgment; but he may ſue in the Court of the Lord by Bill, to be relieved againſt ſuch Judgment; and the Lord, as Chancellour, may give him Relief therein, and ſhall reſtore the Land to the party upon the falſe Judgment given by the Steward, and Reſtitution made to the Copy-holder.

SECT. XV.

Of Surrenders upon Conditions; and where ſuch Surrenders ſhall be good, where not.

Proofs.

P. 31 *Eliz. Co.* 4. part, *Kite* and *Quinton's* Caſe. A Copy-holder in Fee ſurrendred out of Court his Copy-hold-lands to the Uſe of another and his Heirs upon Condition: At the next Court the Surrender was preſented, but in the Preſentment the Condition was omitted: He to whoſe Uſe the Surrender was made being dead, the Lord admitted his Heir. It was

was Reſolved in this Caſe, That the Preſentment of the Surrender was void, becauſe it was not made in ſuch manner as the Surrender was made. But if the Conditional Surrender had been preſented, it had beed good, although it was not entred into the Court-Roll.

A Copy-holder ſurrendred his Copy-hold upon Condition, and afterwards by Deed he releaſed the Condition. Reſolved it was good without a Surrender, for that a Condition or a Right cannot properly be ſaid to be determined by a Surrender, but it may be by a Releaſe. *Tr. 2 Jac. B. R. Cro. 2. part, Hall & Shardbrook's Caſe.*

The Caſe was; Grandfather, Father, and Son: The Grandfather died: The Father aſſigned Dower to the Grandmother, being his Mother, who ſurrendred it back to the Father paying 10 *l. per annum*; The Father died; his Wife brought Dower againſt the Son and recovered, becauſe the Father had the Fee and Freehold conjoyned in the life of the Grandmother by the Surrender. It was Reſolved in this Caſe, That when the Wife of the Father doth recover Dower, ſhe ſhall pay to the Grandmother ſo much Rent as doth belong to her proportion in Dower. And in this Caſe it was holden, *M.* 15 E. 3. 13.

den, That although the Eſtate of a man be Conditional and defeaſible upon a bad Title; yet the Wife ſhall not be ouſted of her Dower untill the Conditional or defeaſible Title be defeated. And where Husband and Wife are Tenants for life, and ſurrender to him in the Reverſion, the Wife of him in the Reverſion ſhall be endowed, and yet the Surrender is but Conditional; for if the Wife of the Tenant for life overliveth her Husband, the Surrender is defeaſible: *à fortiori* in caſe where it is not defeaſible, as in this Caſe. And it was ſaid in caſe of a Surrender of Copy-hold-land, where it was Conditional, the Wife is dowable of it, if the Condition do not determine the Eſtate in the life-time of the Husband: But a Feme is not dowable of Copy-hold but by Cuſtome of the Manor.

H. 27 Eliz. Cro. 3. part, 68. Bright and Hubbard's Caſe.

A Copy-holder deviſed his Lands to his Wife for life, and that ſhe ſhould ſell the Lands for the payment of his Debts; and ſurrendred to the Uſe of his Will: The Copy-holder died: His Wife ſurrendred the Land upon Condition to pay 12 *l.* It was Adjudged, It was a good Surrender upon the Condition, and that it was a good Sale made by her.

The

The Father, Copy-holder in Fee, surrendred his Copy-hold-lands to the Use of his Son in Fee, upon Condition to perform Covenants in an Indenture: The Son after Admittance surrendred to *J S* upon Condition that if the Son pay 10 *l.* the Surrender to be void: The Son neither pays the 10 *l.* nor performs the Covenants in the Indenture: The Father enters. Resolved, That by the Entry of the Father both the Surrenders were avoided, and there the Son might well enter after the death of his Father, and the Surrender made by him to *J S.* *Tr.* 33 *Eliz. Cro.* 1. part, *Symonds* and *Lawna*'s Case.

If a Copy-holder doth surrender his Lands to the Use of *J S* and his Heirs absolutely, and the Lord admits the Tenant upon Condition, it is void; for that after Admittance the Tenant is in by him who made the Surrender, & not by the Lord. 33 *Eliz. Co.* 4. part, *Westwick*'s Case.

The Custome was, That a Copy-holder might out of Court surrender to the Use of a Stranger in Fee: The Lord of the Manor made *J* his Steward *ad exequendum per se*, or his sufficient Deputy, who made *A* his Deputy *pro hac vice* to take a Surrender of Husband and Wife, the Remainder in Fee: The Deputation was farther, *viz.* *Et ulteriùs faciendum quan-* *Tr.* 28 *Eliz. in B. R. Cro.* 1. part, *Barnett*'s Case.

quantum in me eſt: *A* took a Surrender of the Husband and Wife upon Condition, which Condition was afterwards performed and executed. Reſolved in this Caſe, That although the authority to take the Surrender was abſolute, and to be without a Condition; yet when *A* took it upon a Condition to be performed, it was a good Surrender made to him, by reaſon of the words in the Deputation, *Et alteriùs faciendum, &c.*

P. 39 Eliz. B.R. Oland and Berwick's Caſe, Cro. 2. part, &c.

A Woman Copy-holder *durante Viduitate* ſowed the Land, and before Severance of the Corn ſhe took Husband. Reſolved, That although the Eſtate of the Wife was incertain, and determined by the Limitation, and not by any Condition either in Fact or in Law, that the Lord ſhould have the Corn ſowed upon the Lands.

H. 2 Jac. B.R. Cro. 2. part, Curties and Wolverſton's Caſe.

A Copy-holder in Fee of Lands diſcendable in *Borough-Engliſh* had 3 Sons, and ſurrendred to the Uſe of his Will, and thereby deviſed his Lands to his middle Son in Fee, upon Condition to pay to his 4 Daughters, to every of them 20*l.* at their full age: The eldeſt Son had Iſſue 2 Daughters, and died: The middle Son is admitted, and doth not

pay

pay the Daughters their Summs at their full ages: The youngest Son entred in the name of the Daughters, who disagreed to it. It was Resolved, That it was a Condition, but not broken without demand of their Summs at their full ages; and when they disagreed to the Entry, the Entry of the youngest Brother was not lawfull.

A Copy-holder surrendred his Lands into the hands of the Lord, *Habendum* after his death to the Use of an Enfant *en ventre sa Mier*. Resolved that a Surrender to an Enfant *en ventre sa Mier* was not good as an immediate Surrender, for that it cannot begin at a day to come. And whereas a Remainder was thereupon limited over, it was holden to be void, because it was to begin upon a Condition precedent, (*Vid.* the Condition) which was never performed; and therefore the Surrender into the hands of the Lord was void, because he takes it but as an Instrument to convey it over.

M. 13 *Jac.* *B. R. Simpson* and *Sothern's* Case, *Cro.* 2. part.

SECT.

SECT. XVI.

Where Cuſtome which warrants the Lord or his Copy-holder to grant greater Eſtates, warrants the Grants of leſſer Eſtates.

Proofs.

36 *Eliz. Co.* 4. part, *Gravenor* and *Tedd's* Caſe.

THE Cuſtome of a Manor is, That a Copy-hold-eſtate may be granted in Fee-ſimple. In that Caſe it was adjudged, That an Eſtate thereof granted to one and the Heirs of his body is good, and within the Cuſtome; for *Ubi licet quod eſt majus, non debet quod eſt minus non licere.*

39 *Eliz. in* B.R. *Downs* and *Hopkins* Caſe.

The Cuſtome of a Manor is, That Copy-hold-eſtates may be granted for life or lives: In ſuch caſe a Grant is made to a Woman *durante Viduitate ſuâ*: And it was adjudged good, and within the Cuſtome, for that every Grant for life is *durante Viduitate*; but every Grant *durante Viduitate* is not for life.

H. 34 *Eliz.* B.R. *Stanton* and *Barney's* Caſe.

The Cuſtome of a Manor out of mind uſed was, To grant certain Lands, parcell of the ſaid Manor, in Fee-ſimple, and never any Grant was made to any and the Heirs

Heirs of his body for life or for years: The Lord of the Manor did make a Grant by Copy to one for life, the Remainder over to another and the Heirs of his body. It was adjudged, That the Grant and the Remainder over was good; for the Lord having an Authority by Custome, and an Interest withall, might grant any lesser Estate: but otherwise it is where one hath but a bare Authority.

In Trespas the Issue was, if the Lord of the Manor granted the Lands *per Copiam Rotulorum Curiæ Manerii secundùm Consuetudinem Manerii prædict.* It was given in Evidence, that the Lord of late at his Court granted the Lands *per Copiam Curiæ*, where it was never granted by Copy before. In that case the Jury are bound to find *quòd Dominus non concessit*, as it was holden by the Court. For although *de facto Dominus concessit per Copiam Rotulorum Curiæ*, yet *non concessit secundùm Consuetudinem Manerii prædict.* But in that Case it was holden, If Customary Lands had been grantable in Fee; if the same Land escheat to the Lord, and he grant the same to another for life, it is a good Grant, and warranted by the Custome; for the Custome which enables

P. 29 *Eliz. C. B. Kempe* and *Carter's* Case, *Leon.* 1. part, 56.

him to grant in Fee ſhall enable him to grant for life.

M. 15 & 16 *Eliz. in Co. B.* adjudge. acc.

If a Copy-hold-eſtate fall into the hands of the Lord by Eſcheat, Forfeiture, or the like, and the Lord make a Leaſe thereof for years or life by Deed or without Deed, or if he make a Feoffment of it upon Condition, or if the Copy-hold ſo eſcheated, *&c.* be extended upon a Statute or a Recognizance, or the ſame Land be aſſigned to the Wife of the Lord in Dower; In all theſe caſes the Land can never be granted again by Copy, becauſe after ſuch Diſpoſition thereof it was not demiſeable. But if the Interruptions were not lawfull, but tortious, as if the Lord be diſſeiſed, or if the Land be recovered againſt the Lord by a falſe Verdict, or by an erroneous Judgment; yet after the Land is re-continued, and the Interruption which was wrongfull removed, the Land is grantable again by the Lord by Copy.

SECT.

SECT. XVII.

Who shall be said such a Lord of a Manor as may grant Copy-hold-estates; and how long such Estates shall continue; and what persons shall be capable of Copy-hold-estates, what not; and what may be granted by Copy.

EVery one who hath a lawfull Estate or Interest in the Manor, be it Fee, Fee-tail, Dower, Tenantry by the curtesie of *England*, Tenantry for life or years, Guardian, Tenant by Statute-Merchant or *Elegit*, are sufficient Lords and persons to grant Copy-hold-estates to others. And in some special case Estates in Copy-hold-lands may be granted by such a one who hath no Estate or Interest in the Manor. *Coke* 1. part, Instit. 58.

Proofs.

A Guardian in Socage held a Copy-Court in his own name, and granted Copies in Reversion. Adjudged he was *Dominus pro tempore*, and had an Interest in the Lands; for he might make a Lease *Tr.* 1 *Jac. B. R. Scotland* and *Ridler's* Case, *Owen* 115.

thereof in his own name, and therefore he might both grant Copies, and also admit Copy-holders to Estates before granted. But the Bailiff of a Manor hath no Interest in the Manor, and therefore he cannot grant Copies of the Land holden of the Manor.

P. 41 *Eliz. B. R. Gay and Kay's Case, Cro. I. part.*

The Custome of a Manor was, That *Dominus pro tempore* might make a Demise for 2 or 3 Lives in Possession or Reversion: A Woman Tenant in Dower for life of the Manor granted a Copy-hold to *J S* and 2 others for their Lives, *Habendum post mortem* of *A B*, and died: *A B* died. It was holden by the Court in this Case, That the Grant was good in Reversion, although it was not executed in the life of the Tenant in Dower: And *Vide*, That the Lord of a Manor for life, or any other particular Estate, having Interest in the Manor, might grant Copies in Reversion of Lands which are holden by Copy of Court-Roll, although the Grants were not executed in the life of the Grantors; as it was adjudged in Sir *Peter Carew*'s Case. *Quere*: for *Hil.* 14 *Eliz.* in the Earl of *Oxford*'s Case in *Moore* 95. it is not good, unless it come in Possession during the life of the Grantor.

H. 14 *Eliz.* the Earl of *Oxford*'s Case, *Moore* 95.

Note,

Note, It was holden by the Justices *P.* 15 *Jac. in Co. B.* That there ought to be a Custome to enable the Lord of the Manor to make a Grant of a Copy-hold in Reversion. *P.* 15 *Car. C. B.* Godb. 6. acc.

Generally, Things which lie not in Tenure, as Advowsons in grosse, Commons in grosse, or the like incorporate Inheritances, out of which a Rent cannot be reserved, cannot be granted by Copy of Court-Roll by the Lord of the Manor; nor can they be holden by any Service to be done for them. But Advowsons appendants, Commons appendants, and such things as are parcell of a Manor, and which have Continuance, may be granted by the Lord of the Manor, to be holden by Copies of Court-Roll, according to the Custome of the Manor.

In Trespass for cutting down of Under-woods, the Question was, Whether Under-woods might be granted by Copy of Court-Roll, for that by such Grant or Lease the Soil passeth not. But it was Resolved, That Under-woods are a thing of Inheritance and perpetuity, which may have Continuance for-ever; for after they are once cut, they will grow a- *M.* 38 *Eliz. B. R. Cro.* 1. part, *Hoe* and *Taylor's* Case.

gain *Ex stipitibus*, and ſo they may be well granted by Copy.

P. 43 Eliz. B. R. Sands and Darcie's Caſe, Cro. 1. part, acc.

In Trover and Converſion of 20 Loads of Tith-Hay, the onely Queſtion was, Whether Tithes were grantable by Copy. It was objected they were not, becauſe it is againſt the nature of Tithes, and none could have a property in them before the Council of *Lateran*, and therefore it was impoſſible to have any Cuſtome ſo to grant them. But it was Reſolved, That they might be granted by Copy, if there had been a Cuſtome time out of mind ſo to grant them.

39 H. 6. 9. b. Vid. M. 11 Jac. Moore and Goodgreave's Caſe, Cro. 2. part. Coke 11. part, Sir Henry Nevil's Caſe. M. 37 Eliz. B. R. Sir John Bourn's Caſe, acc.

One Manor may be holden of another Manor, and may be demiſeable by Copy of Court-Roll, and there may be Cuſtomary Tenants, according to the Cuſtome of the Manor; and ſo it was ſaid, That a Market or a Fair, although they are things of Priviledge and Liberty onely, yet becauſe they might be appendant unto or parcel of a Manor, or uſed with a Manor and Lands, that an Eſtate might be granted of them by Copy of Court-Roll.

SECT.

SECT. XVIII.

What Acts or things are inseparable, and must be done by the Copy-holder himself; and what acts and where may be done by his Attorney.

A Copy-holder, notwithstanding that generally and according to the Custome of the Manor he hath an Estate of Inheritance in his Copy-hold-lands, *viz. secundùm Consuetudinem Manerii*; yet it hath this Qualification, that it is *ad voluntatem Domini*: and in that respect, upon the Original Grants of such Estates, the Lords of Manors did reserve unto themselves certain Duties and Services and Suits to be done by their Copy-holders; some of which were so inseparable to the person of the Copy-holder, that they could not be done by any other person; others were such as concerned and had respect both to the Lord for his good, and the good of the Manor, as those which concerned the particular good of the Copy-holders themselves, or the Lands which they held of the Lord.

The principal Dutie inseparably to

be done to the perſon of the Lord, and by his Copy-holder, is his doing of Fealty, which upon every Admittance he is to doe to the Lord, for that is eſpecially mentioned in the Copy granted by the Lord in theſe words, *viz. Dat. Domino pro Fine, & fecit Domino fidelitatem:* and Fealty cannot be done but in perſon, and not by an Attorney. And although (as Mr. *Littleton* ſaith) Fealty may be taken by the Steward of the Court of the Lord of the Manor, yet it is done to the Lord himſelf, and it muſt be done by the Copy-holder himſelf in perſon.

Co. 9. part, in *Comb's* Caſe.

A Copy-holder may take an Eſtate in the Copy-hold by the Surrender of another Copy-holder into the hands of two Tenants of the Manor by Cuſtome, (as before is declared.) But then this Surrender muſt be preſented in Court, and he to whoſe Uſe the Surrender was made muſt perſonally appear in Court, and be there admitted to the Land; and he cannot be admitted by Attorney.

The Suit and Service which is to be done in the Court of the Lord by his Copy-holder muſt be done in perſon, and not by another for him; and it is to be done upon his Oath, and a man cannot

ſwear

swear by Attorney; and therefore he cannot make an Attorney to doe his Suit and Service, but the same must be done by him in person.

Again, If a Copy-holder, upon Notice given him of the special day of holding the Lord's Court, and being summoned to appear and to doe his Suit and Service, shall wilfully neglect, or refuse to appear and doe his Suit, it is a Forfeiture of his Copy-hold: and therefore such Suits and Services cannot be done by Attorney, but in proper person.

A Copy-holder of a Manor of the Earl of *Arundel* did surrender his Lands to the Use of his Will, and thereby devised them to his youngest Son and his Heirs, who being in Prison made a Letter of Attorney to *J D*, to pray to be admitted to the Land for his Use, and after such Admittance to surrender the same Lands to the Use of *J S* and his Heirs, to whom he had sold it for the payment of his Debts, who came into Court accordingly, and prayed to be admitted, and make a Surrender of the Land to *J S*; all which was done. In this Case it was Resolved by the Justices, That it was no good Admittance, nor no

Tr. 28 *Eliz. in B. R.* the Earl of *Arundel's* Case, *Leon.* 1. part, 36.

no good Surrender; for that the Heir ought to have come himſelf in perſon in Court to take up his Land, and afterwards to ſurrender it, or otherwiſe have procured the Lord to appoint his Steward to have gone to the Priſon unto him to have been admitted, and afterwards to have ſurrendred the Lands.

Some particular things a Copy-holder may doe by his Attorney; as he may pay his Rent by his Servant or Attorney, or tender it by them; and ſuch Payment and Tender ſhall be good. So if the Cuſtome of the Manor be, That upon the death of every Copy-holder the Tenant ſhall pay and render his beſt Beaſt unto the Lord for a Heriot, there the Heriot may be paid by the Heir before his Admittance, or by the Executor of the Copy-holder; and ſuch Payment or Tender of it ſhall be good.

So by an eſpecial Cuſtome within the Manor a Copy-holder may appoint or nominate, in the preſence of two Tenants of the Manor or other two ſufficient Witneſſes, who ſhall have his Copy-hold-lands after his deceaſe, and alſo that they may appoint what Fine the Lord ſhall have for the Admittance of the Tenant,

M. 5 Jac. in B. R. Bale's Caſe.

ſo

ſo it be a reaſonable Fine; and ſuch Diſpoſition of his Lands and appointment of Fine ſhall be good by the Cuſtome: But yet after ſuch Diſpoſition made, the party who is to have the Land muſt in perſon come into the Lord's Court, and pray to be admitted unto the ſame. And ſo was it very lately adjudged in the Court of *Common Pleas*; both for the Point of the Cuſtome, that it was a good Cuſtome, and Admittance.

A Copy-holder dwelling in a Town long diſtant from the Manor, having Notice of the Court-day when it was to be holden, upon Summons appeared not himſelf, but appointed his Son his Attorney to appear and doe the Services for him for his Copy-hold-lands. In this Caſe it was holden by the Court, That ſuch a perſon ſo appointed might eſſoign the Copy-holder, but not doe the Services for him, for that none could doe the ſame but the Tenant himſelf.

M. 3 Eliz. B. R. Sir John Braunch's Caſe, Leon. 1. part, 104.

SECT.

SECT. XIX.

What Customes within Copy-hold-Manors shall be said to be good and reasonable Customes, and what not.

Coke 4. part, 21. CUstome is the very Soul and life of Copy-hold-estates; for without Custome, or if they break their Customes, they are at the Lord's will, for they hold their Lands *ad voluntatem Domini*, although (as before is said) it be *secundùm Consuetudinem Manerii, &c.* But then the Customes must be reasonable, and not unreasonable Customes.

Coke 1. part Institut. 59. If the Lord doth challenge a Custome within his Manor, to have a Fine of every of his Copy-holders of the said Manor at the Alteration or Change of the Lord of the Manor, be it by Alienation, Demise, Death, or otherwise; this is an unreasonable Custome, for by this means his Copy-holders may be oppressed by the Lords by the payment of a multitude of Fines.

Coke 5. part, Pennieman's Case. A Custome within a Manor, That every Alienation of Lands within the Manor shall be presented at the next Court hol-

holden for the ſaid Manor, upon pain that ſuch Alienation ſhall be void, is a good and reaſonable Cuſtome; for it is but reaſonable that the Lord ſhould know who is his Tenant.

A Copy-holder alledged a Cuſtome within a Manor in *Eſſex* to be, That all the Tenants within the ſaid Manor had uſed to cut down Trees, to repair their Copy-hold and Free-hold Tenements within the ſaid Manor, and alſo to ſell their Trees at their pleaſures. It was doubted if it was a good Cuſtome: but the better opinion of the Court ſeemed to be that the Cuſtome was good. *Paſch. 6 Jac. in Co. B. Glaſcock's Caſe. Vid. Godb. acc.*

The Cuſtome of a Manor in *Worceſter-ſhire* was, That if any Copy-holder committed Felony, and that the ſame be preſented by 12 Homagers in the Lord's Court, the Tenant ſhould forfeit his Copy-hold. It was preſented that *J S*, a Tenant of the ſaid Manor, had committed Felony at ſuch a time; but that at the Aſſizes next after he was acquitted of the ſame: After which the Lord ſeized the Lands. In this Caſe it was adjudged, That the Cuſtome was not good, becauſe in judgment of Law, before Conviction or Attainder he was not a Felon. *M. 6 Jac. in Co. B. Paginton and Hunt's Caſe.*

But

But whether in that Case the Verdict and finding of the Jurors upon the Bill of Indictment agreeing with the finding of the Homagers, that the party had committed Felony, did entitle the Lord to the Copy-hold-lands, notwithstanding the Acquittall of the Jury which was afterwards, was not Resolved.

A Copy-holder did alledge the Custome of the Manor to be, That the Lord might grant Copies in Remainder with the assent of the Tenants, and not otherwise, and that Copies otherwise granted in Remainder should be void. It was said, That this Custome might be good, for it might be so agreed and granted by the Lord at the beginning upon the Creation of the Manor; and that it seemed to be grounded upon the reason of the Common Law, That a Remainder should not be without the assent of the particular Tenant, and to commence with his Estate, and that therefore it was a good Custome. *Quere* the Case, for it was not Resolved, *M.* 31 *Eliz. in Co. B.*

M. 31 *Eliz. Co. B.* Godb. 140.

The Custome of a Manor was, That those who claimed Copy-holds by Discent ought to come at the first, second, or third Court, upon Proclamations made, to take

take up their Estates, or else they should be forfeited. A Tenant of the Manor (having Issue inheritable by the Custome beyond the Sea) died: The Proclamations all passed, and the Heir did not return in two years; but upon his return he prayed to be admitted to the Copy-hold, and profered the Lord his Fine in Court, which the Lord refused to accept of, and to admit the Heir, but seized the Land as forfeited. It was adjudged in this Case, That it was no cause of Forfeiture, because the Heir was beyond the Seas at the time of the Proclamations, and the Lord was at no prejudice, for that, for any thing appeared in the Case, the Lord had taken all the Profits of the Land in the mean time. *H. 7 Jac. in Co. B. Copley's Case.*

The Custome of a Manor was, That every Copy-holder at his death should pay to the Lord his best Beast for a Heriot: A Feme-sole within the Manor Tenant for life took a Husband, and died. It was the opinion of *Dodderidge* in this Case, That although the Custome was good, yet, as this Case was, no Heriot should be paid, because the Wife had not any Goods, by Cattell to pay the same. *M. 7 Jac. in Co. B. by Dodderidge.*

M. 42 Eliz. B. R. *Cro.* 1. part, *Parker* and *Combleford's* Case.

A Custome of a Manor was said to be, That the Lord had used after the death of every one dying within his Manor to have the best Beast of such a person for a Heriot, and to seize and distrain for it. It was adjudged a void Custome, not good to bind a Stranger: but such a Custome to extend to and bind the Tenants of the Manor might be good.

Vid. 3 & 4 Eliz. in Co. B. *Wilson* and *Wise's* Case, *Moore*, acc.

Pasc. 24 Eliz. Moore. *Vide Skipwith's* Case, *Tr.* 33 Eliz. in Co. B. Godb. 143. where the contrary seemeth to be adjudged.

The Custome of a Manor was, *Quòd quilibet tenens per Copiam poterit dimittere terras suas* for life, in Fee, or otherwise; and that a Woman *Cooperta viro poterit devisare* her Copy-hold-lands to any other, or to her Husband, by the assent of the Husband. In this Case the Court held, That the Custome was not unreasonable; but because it was *poterit devisare*, where it ought to have been alledged *usi sunt devisare*, for that cause it was said it was not good.

Pasc. 8 Jac. in Co. B. *Rapley* and *Chaffyn's* Case, acc.

Note by the whole Court, That if the Custome of a Manor is alledged to be, That the eldest Daughter shall solely inherit the Land, such a Custome may be good: But then such Custome shall be taken strictly, *viz.* That the eldest Sister shall not inherit the Land by force of the said Custome.

It

It was Reſolved by the Juſtices, That a Cuſtome that a Leſſee for years may hold the Land for half a year after his Term ended, is no good Cuſtome. But it was agreed, That the Lord of a Copy-hold might by Cuſtome leaſe the ſame for life and 40 years after, and that ſuch a Cuſtome was good. *Vid. Moore's Rep. 3 E. 6.*

A Cuſtome was alledged, That all Inhabitants of certain Meſſuages holden of the Biſhop of *S.* had uſed to grind their Corn which they uſed to ſpend in their Houſes, or ſhould ſell, at certain Mills, called *the Biſhops Mills in S*, and not elſewhere, without the Licence of the Biſhop. It was the opinion of the Juſtices, That it was a void and unreaſonable Cuſtome, to grind all their Corn there which they ſhould ſell, *&c.* *Tr. 14 Jac. in Co. B. Harbin and Green's Caſe, Moore 887.*

The Cuſtome of the Manor of *Y* in the County of *Dorſet* was, That every Copy-holder might name who ſhould have his Copy-hold, and that the Lord ought to admit the Copy-holder ſo named at the death of the Nominator. *Quere* if it be a good Cuſtome, becauſe the perſon nominated hath neither *jus ad rem, nec in re*, the Intereſt being in the Lord, and a man cannot gain an Intereſt to himſelf. *P. 13 Jac. Ford and Haskyn's Caſe, Moore 842.*

ſelf from the Lord againſt the will of the Lord. And therefore it was holden, That where the party in that caſe brought an Action againſt the Lord for denying to admit him to the Copy-hold upon ſuch Nomination, the Action would not lie. But *Quere* that Caſe as to the Cuſtome, for that in 45 *Eliz. in B. R.* in *Powell* and *Peacock*'s Caſe it was adjudged, That a Cuſtome that a Copy-holder in Fee might nominate his Succeſſor, and ſo *in perpetuum*, was adjudged a good Cuſtome. And *Vid. Brock* and *Spencer*'s Caſe in *Hobart* 6 and 11. a Cuſtome that ſuch a Copy-holder in Fee might fell Timber-trees was adjudged a good Cuſtome.

45 *Eliz.* B. R. *Powell* and *Peacock*'s Caſe.

Vid. Hob. Reports 6, and 11. *Brock* and *Spencer*'s Caſe.

The Cuſtome of a Manor was, That if any Tenant allowed his Lands holden of the Manor by Writing or Feoffment, or deviſed them, or ſurrendred them into the hands of the Lord of the Manor to the Uſe of another, that ſuch Alienation, Feoffment, Deviſe or Surrender ought to be preſented within one Year next after. It was ſaid, It was no good Cuſtome. But the Court ruled the Cuſtome to be good and agreeable to the Law; for that it is reaſon that the Lord ſhould know, *&c. Tant. Vid.* before.

P. 41 *Eliz.* B. R. *Parman* and *Bowyer*'s Caſe.

Vid. the ſame Caſe in *Anderſon*'s 2. part, 125. where it ſeemeth the Cuſtome was much doubted, if good, or not.

A Co-

A Cuſtome was, That a Copy-holder of Inheritance might make a Letter of Attorney to two Joynt-tenants, and ſeverally, to ſurrender his Copy-hold-lands in Fee to certain Uſes after his death. It was Reſolved, That the Cuſtome was a void Cuſtome, becauſe by the death of the Copy-holder the Lands were ſettled in the Heir, and an Authority given to deveſt him was not good. *Vid. Willis and Bucknall's Caſe, in B. R. Style's Reports, 311.*

The Cuſtome of a Manor was, That the Land was deviſable by Cuſtome for 21 years, paying the treble value of the Rent, and if the Leſſee died, that the Term ſhould be to his Heirs, paying for a Fine one year's Rent, and if he aſſigned it, the Aſſignee to have it for one year's value of the Rent, and that he might renew the Deviſe for 3 years value. The Court held all the ſaid Cuſtomes to be good and reaſonable. *M. 21 Jac. Cro. 2. part; Page's Caſe.*

The Cuſtome of a Manor was, That if any Copy-hold-tenant did ſuffer his Meſſuage to be ruined for want of Reparations, and the ſame be preſented in Court by the Homage, that ſuch a Tenant ſhould be amerced, and that the Lord had uſed to diſtrain the Beaſts as well of the Under-tenant as of the Te- *P. 17 Car. in B. R. Thorne and Tyler's Caſe.*

nant himself, which were levant and couchant upon the Lands, for such Amercement. It was said, That the Custome was not good, but unreasonable, to distrain a Stranger's Cattel, such as the Under-tenant was. But it was Resolved that the Custome was good: for the Under-tenant, although he was but Tenant for a year, yet he should have all the benefits and privileges which the Copy-holder himself should have had; *& qui sentit Commodum sentire debet & Onus*; and he is distrainable for the Rents and Services due and payable to the Lord; and the Charge lies upon the Land, and not upon the Custome: and therefore the Custome is good.

H. 37 Eliz. B. R. Brown and Foster's Case, Cro. 1. part, 2cc.

The Custome of a Manor was shewed to be, That any Copy-holder of the Manor may surrender within any place of the Manor into the hands of two Tenants; and if a Surrender be to the Use of a Stranger, without expressing any Estate, that the Lord might grant it in Fee to him to whom the Surrender was made. It was objected, That the Custome was unreasonable, because it is to charge the Land with a greater Estate then the Copy-holder gave. On the other side it was said,

That

That the Custome was good; for that the Lord is Chancellour in his own Court, and might dispose thereof when the Tenant leaves it uncertain. *Quere*; for the Case was not Resolved.

SECT. XX.

Where and in what case a Copy-holder or his Lessee upon an Ouster may have and maintain against the Ejector an Ejectione firme, *and where and in what not.*

Proofs.

IN *Ejectione firme* the Case was, The Plaintiff was Lessee for years of a Copy-hold; and the Custome of the Manor was, That a Copy-holder might let the Land for 3 years. It was the opinion of *Anderson* Chief Justice, That the Lessee of a Copy-holder cannot maintain *Ejectione firme*; but if he might, he ought to shew his Lessor's Estate, or his Licence, or a special Custome, to warrant it. *H. 38 Eliz. C. B. Wells and Partridge's Case, Cro. 1. part.*

A Copy-holder made a Lease for years by Indenture warranted by the Custome. It was adjudged, That the *M. 24 & 25 Eliz. Leon. 1. part. 44.*

Leſſee ſhould maintain *Ejectione firme*; although it was ſtrongly objected, That if it were ſo, then the Plaintiff ſhould have an *Habere facias poſſeſſionem*, and ſo Copy-holds ſhould be ordered by the Laws of the Land.

P. 33 *Eliz.* *in B. R. Cole* and *Wall's* Caſe, *Leon.* 3. part, 328.

The Cuſtome of a Manor was, That if any Copy-holder of Inheritance died, his Heir within the age of 14 years, then the Lord of the Manor might grant the Cuſtody of his Body and Lands to whom he pleaſed: A Copy-holder of Inheritance died, his Heir within the age of 14 years: The Lord committed the Cuſtody of his Body and Lands to *J S*, who, being ejected, brought a Writ of *Ejectione Cuſtodie* of his Body. It was the opinion of the Juſtices, That the Action did not lie. But it was agreed in that Caſe, That an *Ejectione firme* lieth upon a Demiſe of Copy-hold-lands by Leaſe for years by the Copy-holder himſelf, but not upon a Demiſe by the Lord of the Copy-hold.

Coke 4. part, 26. in *Melwich's* Caſe. *M.* 8 *Jac. in Cu. B. Cranford* and *Freſhwater's* Caſe, acc.

Note, It was Reſolved by the Juſtices, That the Leſſee of a Copy-holder for a year may maintain an *Ejectione firme*: for inaſmuch as his Term is warranted by the Law by force of the general Cuſtome

stome of the Realm, it is but reason that, if he be ejected, he should have an *Ejectione firmæ*; for it is a speedy Course for a Copy-holder to gain the possession of the Land against a Stranger, being no more then what right requires to be yielded him for the Recovery of his Estate.

H. 39 Eliz. Cro. 1. part, Goodwin and Langhurst's Case, &c.

SECT. XXI.

What Statutes and Acts of Parliament do extend to Copy-holds and Copy-hold-estates, what not.

SOme things concerning this Division being spoken of in the former part of this Treatise, and some particular Statutes there being mentioned within which Copy-holds are included, and in what not, I shall refer the Reader thereunto; adding onely a few Cases upon some particular Acts not therein mentioned, with the Authorities and Resolutions of the Justices therein. And as concerning within what Statutes Copy-holds are, I shall take and relie upon the general Rule which is put in Sir *Edward Coke*'s 3. part of his Reports, in *Heydon*'s Case,

Coke 3. part, Heydon's Case.

viz. When a Statute or Act of Parliament doth alter the Service, Tenure, Interest of the Estate, or other thing in prejudice of the Lord or of the Custome of the Manor, or in prejudice of the Tenant, there the general words of such Statute or Act of Parliament do not extend to Copy-holds or Copy-hold-estates: But when the Statute or Act of Parliament is generally made for the good of the Commonweal, and no prejudice can come thereby, by alteration of any Service, Tenure, or Interest, or Custome used within the Manor, there Copy-holds and Copy-hold-estates are within the purview of such Statutes or Acts.

Proof.

6 *Jac. in Co. B. Coke* Select Cases 27, 28.

It was Resolved by all the Justices, That no Tenure shall pay for a reasonable Aid to make the eldest Son Knight, or to marry the eldest Daughter, but Tenure by Knight's-Service or Tenure in Socage. Now *Littleton* saith, that all Tenures are either Knight's-Service or Socage: And the Statute of *Westm.* 1. *cap.* 36. of reasonable Aid extends onely to such Tenures. The Question then is,

Litt. 16. sect. 36.

Whether

Whether a Copy-hold-Tenure be within that Statute. I shall not determine the Question, for that I do not find it moved in any Book of the Common Law: But although I humbly conceive Copy-holds be within the general words of Mr. *Littleton*, (all Tenures in Socage;) yet that the said Statute of *Westm.* 1. *cap.* 36. doth not extend to Copy-holds. *Quere* of it.

The Statute of *Westm.* 2. *de Donis conditionalibus* I conceive doth not extend to Copy-holds within the general words thereof. The words of the Statute are of Gifts *per Chartam datis*; and Copy-holds do not pass by Deeds, but by Surrenders. But yet it is conceived, that although they be not within the general Words of the Statute, yet they are within the Equity of the said Statute, if there be a Custome to warrant such Estates. Statute *Westm.* 2. *de Donis.*

The Case was, A Copy-holder in Fee surrendred his Copy-hold-lands to the use of his Will; and having a Daughter born, and his Wife with Child, he devised part of his said Lands to his Son or Daughter which his Wife went with, *& Haeredibus suis legitimè procreatis*; and the residue thereof he devised to his Daugh- *H.* 37 *Eliz. in Co. B. Church* and *Wyatt's* Case, *Moore* 637.

Daughter born, to have to her and the fruit of her body. One Point in this Case was, What Estate the Daughter born had in the said Copy-hold-lands, if in Tail or not. It was said, It was a Fee-tail in the Daughter born. But it was much doubted if it was an Estate within the said Statute *de Donis, &c.* But in that Case it was agreed, That Copy-hold might be entailed by Custome co-operating with the said Statute, and if not within the words, yet within the Equity of the said Statute.

Stat. *Prærogat. Regis*, cap. 9 & 10. *Co.* 8. part, 170. in *Tomerson's* Case. *Co.* 4. part, 127. in *Beverly's* Case.

The Statute of *Prærogativa Regis, cap.* 9 and 10. gives the Lands of Idiots natural to the King, he finding them convenient Maintenance out of the Profits thereof: But if the Idiot hath Copy-hold-lands discended unto him, the King shall not have the Wardship of those Lands therewith, out of the Profits thereof to maintain the Idiot, because the same would be prejudicial to the Lord of the Manor, of whom the Lands are holden by Copy. But yet all Alienations made by an Idiot of his Copy-hold-lands, after Office found, shall be avoided by the King.

Copy-

Copy-hold-lands are not within the Statute of Westm. 2. cap. 20. *of* Executions. *Stat. West. 2. cap. 20.*

For if a Judgment be had in a Court of Record against a Copy-holder for Debt and Dammages, although the Plaintiff may have Execution by *Fieri facias* against his Goods, or a *Capias* against his Body; yet he cannot have Execution of the moyetie of his Copy-hold-lands by *Elegit*, for that Copy-hold-lands are not within that Statute. And so it is, if a Statute-Merchant or Staple be acknowledged by a Copy-holder for the payment of Money at a day certain, which is not payed, his Copy-hold-lands are not extendable for the same. And the reason of these Cases is, because no person can come to Copy-holds but by Admittance of the Lord; and the Lord should thereby lose his Fine which is due upon Admittance, if the party might have the Lands upon Extent delivered unto him.

If Tenant by the Curtesie, or Lessee for years, be of a Manor, and Copy-holds were in his hands by Forfeiture or *Pasc. 12 Eliz. in C. B. Moore 94.*

other

other determination, and he bindeth himſelf in a Statute, and afterwards he deviſeth the Copy-hold again; the Copy-hold ſhall be liable to the Statute. But if a Copy-holder bindeth himſelf in a Statute-Merchant or Staple, his Copy-hold-lands ſhall not be extended upon the ſaid Statute, becauſe therein he hath but an Eſtate at will.

Copy-hold-lands are not within the Statute of 31 H. 8. cap. 13. *of* Monaſteries.

Stat. 31 *H.* 8. cap. 13.

M. 25 & 26 *Eliz.* in the *Exchequer*, *Leon.* 1. part, 4.

The Guardians of the Colledge of *Otlery*, Lords of a Manor, granted Lands for 3 Lives by Copy, according to the Cuſtome of the Manor; afterwards in 30 *H.* 8. they leaſed the Lands to *JS*, rendring the accuſtomed Rent, and afterwards ſurrendred their Colledge to King *Hen.* 8. And if the Leaſe, being within one year of the Surrender, was within the Statute or not, was the Queſtion. The Caſe is not adjudg'd, but a *Quere* made of it. But in that Caſe it was adjudged, That if there be Lord of a Copy-holder for life, and the Lord grants a Rent-charge out of his Manor, of which the Copy-hold is parcell, and then the Copy-hol-

der

der doth surrender to the Use of another, who is admitted; he shall not hold the Lands charged: but if he dieth, so as his Estate is determined, and the Lord grants the Land to another *de novo* to hold by Copy, the new Tenant shall hold the Land charged.

Copy-hold-lands not within the Statute of 32 H.8. *of* Rents.

The Lord of a Manor (of which there were Copy-holds) granted a Rent-charge for life, and afterwards made a Feoffment of the Manor to J S and his Heirs, who granted a Copy-hold for life: J S died, and the Rent was behind, and the Grantee of the Rent distrained for the Arrerages. It was Resolved in that Case, That the possession of the Copy-holder was not chargeable to the Distress, for that the Copy-holder was not in by him who immediately ought to pay the Rent, but in the possession of the Land by the Custome. But *Quere* that Case: and *vide Hill.* 18 *Eliz. in Co. B.* the Earl of *Westmorland*'s Case. For there the Case was, That the Demesnes of a Manor were usually let for lives

Tr. 27 *Eliz. in B. R. Rot.* 1201. *Sand.* and *Hempstrie*'s Case, *Leon.* 2. part, 109.

Hil. 18 *Eliz. in Co. B.* the Earl of *Westmorland*'s Case, *Leon.* 3. part, 59.

lives by Copy, and the Lord granted a Rent-charge to *J D pro Consilio impendendo* for life, and afterwards conveyed the Manor to *J N* in Tail: The Rent was behind, and the Grantee of the Rent died, and the Executors of the Grantee distrained for the Arrerages. And there it was adjudged, That the Copy-holder should hold the Lands charged.

Copy-hold-lands not within the Statute of 32 H. 8. *of* Conditions.

A Copy-holder by Licence made a Lease by Indenture for 21 years rendring Rent: The Lessee covenanted to lay upon the Lands yearly 40 Loads of Dung: Afterwards the Copy-holder surrendred his Lands unto another in Fee, who was admitted. The Point was, If he was such an Assignee as might have Covenant within the Statute of 32 *H.* 8. *Quere*; for the Case was not Resolved.

M. 20 *Jac. in C. B. Plott* and *Plomer's* Case, *Cro.* 1. part, 17.

A Copy-holder by Licence of the Lord made a Lease for 60 years, if he so long lived, rendring Rent, upon Condition to re-enter: The Copy-holder surrendred to the Lessor of the Plaintiff in Fee, who demanded the Rent, which was not payed.

Tr. 10 *Jac. in B. R. Brasier* and *Beale's* Case, *Telv.* 223.

ed. It was Resolved in this Case, That the Entry of the Lessor was not lawfull, for that Copy-hold-lands were not within the Statute of *Conditions*, nor the Lessor such an Assignee as the Statute intended: For the Assignee of a Copy-holder being in onely by Custome, is not privy to the Lease made by the first Copy-holder, nor in by him, but may plead his Estate immediately under the Lord.

Note, That in no case, where the King claims a share in the Forfeiture of the Lands, (as in the Statute of 2 *H.* 5. which speaks of Lands forfeited for Heresie, *viz.* that the King shall have *Annum, diem & vastum*, as he hath for Lands forfeited for Felony,) Copy-hold-lands are not within the general words of such Statute; for that in such case, if the Copy-holder committeth Felony, the Copy-hold is presently forfeited to the Lord of the Manor; and therefore out of the words of that Statute, and other the like Statutes.

The Statute of 12 *Eliz. cap.* 8. which speaks of Inquisitions or Offices found by Escheators, doth not extend to Copy-hold-lands;

lands: for although the Fines are not found within the Inquisitions or Offices, yet the King shall not be entitled to any of the said Copy-hold-lands, but all such Copy-holders shall and may hold and enjoy their Estates and Interests in their said Copy-hold-lands as formerly they might have done; and the Interest of the Copy-hold is preserved by the said Statute, though it be not found by Office after the death of the King's Tenant.

Vid. 30 Eliz. *in* Scaccario; *Leon.* 1. part, 98. The Statute of 13 *Eliz. cap.* 4. of Auditors and Registers of the Queen, doth not extend to Copy-holds, for that it should be a great prejudice.

Then for the second part of this Division.

Proofs.

Copy-hold-lands are within the Statute of 4 H. 7. *of* Fines.

Vid. 30 Eliz. *Leon.* 99. acc. If I levy a Fine of my Copy-hold-lands, and 5 years pass; not onely the Lord is thereby barred as to the Freehold of it and the Inheritance, but I, who

who am the Copy-holder, am also barred as to my Possession: For the intent of the Statute was to take away all Controversies, *& litibus finem imponere*; and Contention may as well arise and be about Copy-hold-lands as for Free-hold-lands at the Common Law.

Vid. Coke 5. part, *Sattyn's Case.*

Copy-hold-lands are within the Statute of 29 Eliz. *and other Statutes of* Recusancy.

A Recusant being convict for not paying of 20 *l.* a month forfeited by the said Statute, a Commission issued out of the *Exchequer* to enquire and seize all his Goods, Lands, Tenements and Hereditaments liable to such Seizure: Upon the Return of the Commission it appeared, That some of the Lands returned were Copy-hold-lands. It was a Question if they were within the Statute. It was the opinion of the Court, That they were within the Equity of the Statute: for the words of the Statute are, *Lands, Tenements and Hereditaments*, which are forcible words; and the intention of the Statute was, That the Queen should have all the Goods, and the Recusant by

Tr. 30 Eliz. *in Scaccario, Saliard and Everat's Case, Leon.* 1. part, 97.

the words of the Statute was onely to have the third part of his Lands, which is all that the Law gives him; And if Copy-hold-lands should not be within the Statute, if a Recusant, who had great Possessions onely of Copy-hold-lands, should go unpunished, it was contrary to the meaning of the Makers of the Act.

Copy-holds are within the Statutes of 13 Eliz. *and* 1 Jacobi.

Tr. 15 Jac. in B. R. Crisp and Pratt's Case, Noth. 34, 35, and 36.

It was Resolved by all the Justices, That Copy-hold is within the Statutes of 13 *Eliz.* and 1 *Jacobi*, because it is no prejudice to the Lord, for that there ought to be a Composition with the Lord and the Vendee of the Lands; and although the Sale is and ought to be by Indenture, yet the Vendee ought to be admitted by the Lord. 2. The words of the Statute of 13 *Eliz.* expresly are, That the Commissioners shall dispose of Lands as well Copy as Free; and the said Statutes shall be construed most beneficially for Creditors, *i. e. Jusum cuique tribuere.*

There

There are divers other Statutes and Acts of Parliament which extend to Copy-hold-lands, *viz.* 1. The Statute of 5 *Eliz. cap.* 13 & 14. of *Forgery.* 2. The Statutes of 5 *R.* 2. of *Departure out of the Realm*, and 14 *Eliz.* of *Fugitives.* 3. The Statute of 32 *H.* 8. *cap.* 9. of *Buying of Pretensed Titles.* All which Statutes extend to Copy-hold-lands; of which I might shew many Cases and Resolutions of the Justices in their several Courts. But because the same would make this Section to be long and tedious, and my Intention was to use much brevity in this Addition and Amplification of what in the former part of this Treatise hath been written concerning *Copy-hold and Customary Estates*; I shall here put an End to the Work.

FINIS.

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